

# EXHIBIT B

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SHAIENDRA JOSHI,

Plaintiff,

Case No.:  
17-cv-04112 (JGK)

v.

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE  
CITY OF NEW YORK, COLUMBIA UNIVERSITY IN THE  
CITY OF NEW YORK and COLUMBIA UNIVERSITY  
COLLEGE OF PHYSICIANS AND SURGEONS,

Defendants.  
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DEPOSITION OF SHAIENDRA JOSHI

THURSDAY, NOVEMBER 21, 2019

10:02 a.m.

Reported by:

Stephanie M. Butler

Job no: 26393

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<p style="text-align: right;">Page 2</p> <p>1 2 November 21, 2019 3 10:02 a.m. 4 New York, New York 5 6 Confidential Deposition of 7 Shailendra Joshi, held at the offices of 8 Buckley, 1133 Avenue of the Americas, New 9 York, New York, pursuant to Notice, before 10 Stephanie M. Butler, a Notary Public of the 11 State of New York. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 S T I P U L A T I O N S 3 IT IS HEREBY STIPULATED AND AGREED, by 4 and between the attorneys for the respective 5 parties herein, that filing and sealing of 6 the transcript be waived, and the same are 7 hereby waived. 8 IT IS FURTHER STIPULATED AND AGREED 9 that all objections, except as to the form 10 of the question, shall be reserved to the 11 time of the trial. 12 IT IS FURTHER STIPULATED AND AGREED 13 that the within deposition may be sworn to 14 and signed before any officer authorized to 15 administer an oath, with the same force and 16 effect as if signed and sworn to before the 17 Court. 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 2 A P P E A R A N C E S: 3 4 MCLAUGHLIN &amp; STERN, LLP 5 Attorneys for Plaintiff 6 260 Madison Avenue 7 New York, New York 10016 8 BY: JONATHAN R. JEREMIAS, ESQ. 9 jjeremias@mclaughlinstern.com 10 11 BY: STEVEN J. HYMAN, ESQ. 12 shyman@mclaughlinstern.com 13 BUCKLEY LLP 14 Attorneys for Defendants 15 1133 Avenue of the Americas 16 Suite 3100 17 New York, New York 10036 18 BY: ANDREW SCHILLING, ESQ. 19 aschilling@buckleyfirm.com 20 21 BY: BRIAN WEGRZYN, ESQ. 22 bwegrzyn@buckleyfirm.com 23 BY: DANA WALSH KUMAR, ESQ. 24 dkumar@buckleyfirm.com 25</p>	<p style="text-align: right;">Page 5</p> <p>1 2 C O N F I D E N T I A L 3 S H A I L E N D R A J O S H I, called as 4 a witness, having been duly sworn 5 by a Notary Public, was examined and 6 testified as follows: 7 EXAMINATION BY 8 MR. SCHILLING: 9 Q State your name for the record. 10 A Shailendra Joshi. 11 Q State your address for the 12 record. 13 A 4 Dogwood Lane, Ho-Ho-Cus, New 14 Jersey 07423. 15 Q Good morning, Dr. Joshi. 16 Did you do anything to prepare 17 for this deposition? 18 A Yes. I talked to my team, 19 Mr. Hyman and Jonathan Jeremias. 20 Q And other than speaking with 21 counsel, did you do anything else to 22 prepare for today's deposition? 23 A They asked me to -- well, we 24 looked at some -- 25 Q Without telling me what they asked you to do.</p>

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<p>1 CONFIDENTIAL</p> <p>2 A We looked at some of the</p> <p>3 documents to review the timelines of</p> <p>4 things.</p> <p>5 Q Other than counsel, did you</p> <p>6 speak to anybody else about the fact that</p> <p>7 you were being deposed today?</p> <p>8 A I was asked. Because I was on</p> <p>9 vacation, Dr. Mark Heath asked me if I was</p> <p>10 going for a deposition.</p> <p>11 Q And other than that, did you</p> <p>12 speak to anybody else?</p> <p>13 A No.</p> <p>14 Q You're on vacation the month of</p> <p>15 November?</p> <p>16 A Yes.</p> <p>17 Q Do you typically take November</p> <p>18 as vacation?</p> <p>19 A Yes. Because otherwise, I lose</p> <p>20 my vacation time.</p> <p>21 Q I'm sorry?</p> <p>22 A I lose my vacation time if I</p> <p>23 don't take it.</p> <p>24 Q I see.</p> <p>25 How long has it been your</p>	<p>1 CONFIDENTIAL</p> <p>2 (Whereupon, Curriculum Vitae,</p> <p>3 was marked as Joshi Exhibit 1 for</p> <p>4 identification, as of this date.)</p> <p>5 BY MR. SCHILLING:</p> <p>6 Q Dr. Joshi, I have placed in</p> <p>7 front of you a document marked as</p> <p>8 Exhibit 1.</p> <p>9 Do you recognize this document?</p> <p>10 A Yes, it's my CV.</p> <p>11 Q And it says "Date of</p> <p>12 Preparation: October 9, 2017."</p> <p>13 Is this document an accurate</p> <p>14 curriculum vitae as of October 9, 2017?</p> <p>15 A I certainly think so.</p> <p>16 Q Have you updated your CV since</p> <p>17 October 9, 2017?</p> <p>18 A I may have for some grant</p> <p>19 funding and things like that.</p> <p>20 Q Where were you before you came</p> <p>21 to Columbia?</p> <p>22 A I was at Galveston, Texas.</p> <p>23 Q And you were an --</p> <p>24 A Prior to that, I was a</p> <p>25 postdoctoral fellow at Columbia. I was a</p>
Page 7	Page 9
<p>1 CONFIDENTIAL</p> <p>2 practice to take vacation in the month of</p> <p>3 November?</p> <p>4 A Generally for the last four</p> <p>5 years, five years.</p> <p>6 Q Do you take the entire month</p> <p>7 off?</p> <p>8 A If possible, because otherwise,</p> <p>9 all my days are lost. So whatever they</p> <p>10 can give me, I take it.</p> <p>11 Q Do you take any vacation other</p> <p>12 than in November?</p> <p>13 A Generally not. Usually the labs</p> <p>14 are busy and work is going on.</p> <p>15 Q When did you join Columbia?</p> <p>16 A I joined Columbia as a fellow in</p> <p>17 1995 August.</p> <p>18 Q And when did you join as</p> <p>19 faculty?</p> <p>20 A On, I think, December the 1st,</p> <p>21 1997.</p> <p>22 MR. JEREMIAS: I'm going to ask</p> <p>23 the reporter to mark as Joshi</p> <p>24 Exhibit 1 a document entitled</p> <p>25 "Curriculum Vitae."</p>	<p>1 CONFIDENTIAL</p> <p>2 postdoctoral fellow before I became a</p> <p>3 faculty at Columbia. And prior to that, I</p> <p>4 was in Galveston, Texas.</p> <p>5 Q And what brought you to</p> <p>6 Columbia?</p> <p>7 A Columbia, because it was</p> <p>8 neuroscience research. I was interested</p> <p>9 in neuroscience research. This was one of</p> <p>10 the best research programs, so I came as a</p> <p>11 fellow here, and I joined Bill Young, who</p> <p>12 was another leading neuroanesthesiologist</p> <p>13 in the country.</p> <p>14 Q What was Bill Young's position</p> <p>15 at the time?</p> <p>16 A He was initially the vice chair</p> <p>17 for research at Columbia when I joined.</p> <p>18 Q Is that the position that</p> <p>19 Dr. Emala holds today?</p> <p>20 A Yes.</p> <p>21 Q When did Dr. Emala become vice</p> <p>22 chair of research?</p> <p>23 A Between Bill Young and Dr. Emala</p> <p>24 was Dr. Carol Hirshman. And after</p> <p>25 Dr. Carol Hirshman retired, which was, I</p>

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<p>1 CONFIDENTIAL</p> <p>2 think, around 2008, 2009, then Dr. Emala</p> <p>3 took over.</p> <p>4 Q Got it.</p> <p>5 Anything else about Columbia</p> <p>6 that prompted you to pursue employment</p> <p>7 there?</p> <p>8 A Oh, it just was a very fantastic</p> <p>9 research program I joined with Bill Young.</p> <p>10 We were successful in research. Bill</p> <p>11 Young was exceedingly well-funded,</p> <p>12 exceedingly well-respected.</p> <p>13 He had a multidisciplinary team</p> <p>14 of researchers. We were very productive</p> <p>15 in research grants, applications. And</p> <p>16 unfortunately, he had to leave under</p> <p>17 difficult circumstances to join UCSF,</p> <p>18 where he became the vice chairman for</p> <p>19 research.</p> <p>20 Q When did he leave?</p> <p>21 A He left around 2000, 2001.</p> <p>22 Somewhere in that time period.</p> <p>23 Q Who was chair of the department</p> <p>24 of anesthesiology when you joined the</p> <p>25 faculty in 2017?</p>	<p>1 CONFIDENTIAL</p> <p>2 the offer?</p> <p>3 A Yes. On the advice of Dr. Bill</p> <p>4 Young, probably.</p> <p>5 Q Where else were you considering?</p> <p>6 A He was trying to send me all</p> <p>7 over the country, but the need didn't</p> <p>8 arise. It became a pretty straight</p> <p>9 transition. And I was doing really good</p> <p>10 work with him. It was the best time.</p> <p>11 Q Did you interview with any other</p> <p>12 institutions?</p> <p>13 A I think I was going to Indiana,</p> <p>14 University of Indiana, somewhere. But</p> <p>15 before it even went through, there was</p> <p>16 no -- no -- the job offer at Columbia came</p> <p>17 through.</p> <p>18 MR. SCHILLING: I'm going to ask</p> <p>19 the reporter to mark as Exhibit 2 a</p> <p>20 September 29, 1997 letter.</p> <p>21 (Whereupon, Letter, Dated</p> <p>22 September 29, 1997, was marked as</p> <p>23 Joshi Exhibit 2 for identification, as</p> <p>24 of this date.)</p> <p>25 Q Dr. Joshi, I've handed you</p>
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<p>1 CONFIDENTIAL</p> <p>2 A There was an interim chairman at</p> <p>3 that time, Dr. Finster, Miec Finster, and</p> <p>4 Margaret Wood was probably selected when I</p> <p>5 was coming in, but had not assumed</p> <p>6 responsibility. So she was transitioning</p> <p>7 into the program. This is when I was a</p> <p>8 fellow. By the time I became a faculty,</p> <p>9 she was the one who was the chair.</p> <p>10 Q Did you have conversations with</p> <p>11 Dr. Wood around the time you joined as</p> <p>12 faculty?</p> <p>13 A Yeah, sure.</p> <p>14 Q About becoming a faculty member?</p> <p>15 A She offered it to me.</p> <p>16 Q Tell me about that.</p> <p>17 A I had been very successful in</p> <p>18 research with Bill Young. And when I</p> <p>19 finished my fellowship, there were a</p> <p>20 couple of job options I was looking at.</p> <p>21 But before I could go for any interview, I</p> <p>22 had been offered a position at Columbia,</p> <p>23 and Bill was at Columbia, so I stayed back</p> <p>24 and became a faculty.</p> <p>25 Q And it was Dr. Wood who made you</p>	<p>1 CONFIDENTIAL</p> <p>2 what's been marked as Joshi Exhibit 2.</p> <p>3 Do you recognize that document?</p> <p>4 A Not really. It's -- this is an</p> <p>5 appointment-related document I must have</p> <p>6 signed when I joined, and that's about all</p> <p>7 I can say based on what I'm seeing right</p> <p>8 now. I don't remember the document,</p> <p>9 per se.</p> <p>10 Q On the page with the Bates stamp</p> <p>11 that ends in 4, under "accepted," is that</p> <p>12 your signature?</p> <p>13 A I'm sure.</p> <p>14 Q Do you recall, around the time</p> <p>15 that you joined Columbia faculty, entering</p> <p>16 into any other agreements with the</p> <p>17 university?</p> <p>18 A Not to my knowledge. There may</p> <p>19 be something related to the hospital that</p> <p>20 we might have signed as a routine process.</p> <p>21 Q Other than that, do you recall</p> <p>22 any other agreements you signed?</p> <p>23 A This is all, kind of, way back</p> <p>24 when, and I don't remember the details of</p> <p>25 what I signed at that time.</p>

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<p>1 CONFIDENTIAL</p> <p>2 Q Before joining the faculty at</p> <p>3 Columbia, did you have any discussion with</p> <p>4 Dr. Wood or anybody else about the</p> <p>5 policies of Columbia University?</p> <p>6 A Not in any great detail that I</p> <p>7 remember.</p> <p>8 Q Do you remember --</p> <p>9 A What I remember right now is</p> <p>10 going to a room. She's talking about, you</p> <p>11 know, we are offering you this position,</p> <p>12 handing me a bunch of papers, and signing</p> <p>13 it.</p> <p>14 Q Do you recall reviewing any</p> <p>15 policies of Columbia at the time you</p> <p>16 signed as a faculty?</p> <p>17 A Not in detail. I was very</p> <p>18 preoccupied with research. Research was</p> <p>19 the main goal, and we were doing very</p> <p>20 well. My central focus was research. And</p> <p>21 it was a pretty good transition for me,</p> <p>22 you know, because all the experiments were</p> <p>23 continued, with equipment, with work.</p> <p>24 Projects were continued.</p> <p>25 I never really looked into the</p>	<p>1 CONFIDENTIAL</p> <p>2 A Yeah.</p> <p>3 Q -- at "Present Support"?</p> <p>4 A Yeah.</p> <p>5 Q It says "Present Support:</p> <p>6 Departmental."</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q What does that mean?</p> <p>10 A "Present Support: Departmental"</p> <p>11 means that the department was supporting</p> <p>12 the research effort.</p> <p>13 Q And that was true as of</p> <p>14 October 9, 2017?</p> <p>15 A Right.</p> <p>16 Q Is that true today?</p> <p>17 A Partially. The department is</p> <p>18 not supporting me with supplies to the</p> <p>19 lab, so I don't get supplies. I buy my</p> <p>20 own supplies.</p> <p>21 But, otherwise, in terms of the</p> <p>22 lab, the lab is still kind of functioning,</p> <p>23 and the technician is still there. So we</p> <p>24 are doing projects that do not use too</p> <p>25 many supplies, and research that we can</p>
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<p>1 CONFIDENTIAL</p> <p>2 details of all those employment-related</p> <p>3 documents that I had to sign.</p> <p>4 Q And other than</p> <p>5 employment-related documents that you had</p> <p>6 to sign, did you ask to review any other</p> <p>7 policies or procedures of the university?</p> <p>8 A I had a good relationship with</p> <p>9 the department. There was no reason for</p> <p>10 me to, you know, scrutinize it, you know,</p> <p>11 in an aggressive way, or I don't remember</p> <p>12 doing that.</p> <p>13 Q Okay.</p> <p>14 A Most of the time, they said sign</p> <p>15 this, and I would sign this.</p> <p>16 Q Going back to Exhibit 1, which</p> <p>17 is your CV, if you go to page 4 of the CV,</p> <p>18 which has the Bates number ending in 1595,</p> <p>19 it talks about fellowship and grant</p> <p>20 support under number 11.</p> <p>21 Do you see that?</p> <p>22 A Which page is it?</p> <p>23 Q Page 4 of the CV.</p> <p>24 A Page 4 of the CV, yeah.</p> <p>25 Q Are you with me --</p>	<p>1 CONFIDENTIAL</p> <p>2 continue, which is germane to our research</p> <p>3 project.</p> <p>4 Q Since when have you not been</p> <p>5 receiving the supplies that you --</p> <p>6 A I thought the last amount of</p> <p>7 funds released was in summer of '17 and</p> <p>8 carried over until the summer of '18.</p> <p>9 Q And at that point, the funds</p> <p>10 that you had available for supplies ran</p> <p>11 out?</p> <p>12 A Ran out. And so we started</p> <p>13 doing different projects, which are</p> <p>14 related to grants. We do not use so many</p> <p>15 supplies.</p> <p>16 Our animal research program --</p> <p>17 which the whole program was built on</p> <p>18 developing drugs -- virtually ceased. And</p> <p>19 in addition to that -- but we continued to</p> <p>20 do cell work, which was less</p> <p>21 cost-intensive, but we could still test</p> <p>22 new drugs we were developing. But it was</p> <p>23 focused on cell lines on low-cost</p> <p>24 activities.</p> <p>25 We also started developing</p>

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devices, which we could then use in human subjects, like engineering projects, which, you know, I can buy, in fact, you know, from the market and make new products and try to focus on getting patterns on technologies related to my research, which would eventually help in human translation of that research.

So we tried to find a low-cost alternative by continuing on with the research.

Q Had you made requests for lab supplies and that request was denied?

A I was categorically told that once the current amount of funds that was being shipped to me, which was when the last cycle was given, no more funds would be released.

Q Who told you that?

A Dr. Brambrink, in a meeting. Psh, then it's up.

Q "Then it's up," meaning what?

A The funding for supplies is up. Now, when I told Dr. Emala what

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early 2017?

A No. But they are released for the whole year, so the funds ran to '18.

Q So you had funds through the end of 2018?

A No, no. To the summer of '18.

Q The summer of '18?

A Right. So the meeting was in early 2017. The funds released in the summer of '17 lasted until the summer of '18.

Q When they ran out in the summer of '18, at that point, did you go back to Dr. Brambrink and say I need more money for lab supplies?

A No. He had categorically told me this is it. This was it.

Q Did you say that in writing or in a meeting?

A He had said it in a meeting, very clearly. In fact, he had been telling me that even before, that once your supplies run out, we'll shut down your lab.

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the situation of the lab was about two months ago -- that these are the things I cannot charge to my credit card, which means I cannot order animals, I cannot order this, I cannot order this, and a list of things -- Dr. Emala then asked me to apply to a mechanism that was never told to me before, which was the research allocation thing.

And we are supposed to have a meeting right now, once I come back from vacation, and decide if they're going to release additional funds.

Q When was the meeting with Dr. Brambrink in which he told you that he would not fund your lab supplies?

A I think it was in the summer of -- late -- before the release of the last few funds, the last fund cycle. So it must have been in early 2017.

Q Early 2017?

A Yeah.

Q And you haven't gotten funds from Columbia to support your lab since

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Q But he didn't shut down your lab?

A Not after the lawsuit was filed. But right from the very beginning, the first day I met Dr. Brambrink, his goal was very clear. We're going to shut down the lab.

So initially, the first shutdown deadline he gave me in the first meeting of August 2016 was in July of '17. July of '17. And the wind down of that would begin in March or April of '17.

Q So how did the conversation with Dr. Emala come about in which he said that there's this process for --

A That was the e-mail I wrote to him. You know, because they had -- so last year, Dr. Emala had testified that there was a new mechanism of funding that was created, in which we had to apply for a nonclinical time and resources of the department and submit projects that we are doing.

So I filed an application. And

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most of the people were getting approval, but I didn't get my approval, and I got no feedback. So I corresponded to them. I said what happened? And then as a follow-up of that, as it developed, you know, this thing happened.

Q How much have you spent of your own money on lab supplies?

A I have no idea, because I just tell the tech don't worry about it, and keep on doing the work, and whatever you need, we'll put it in. It's difficult for me to give you a number right now.

Q Have you ever considered putting in to get reimbursed for those expenses?

A No. I was told there's no way to reimburse. I was told this was it. The lab is going to close if you don't have it.

Q Weren't you also told at some point that it's not permitted under Columbia policy to fund your own lab?

A Yeah. But I was buying equipment to make the lab work. I'm not

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funding anything. I'm not buying in terms of through the Columbia system.

I have to get equipment, like if I do a hobby, if I do a project, like the equipment where I make things also. So there's equipment in my house, which I have, which I brought to Columbia so that the work can go on. So it was not a formal mechanism, but whatever I could do informally, I did it.

Q There was a point in time, was there not, where you offered to pay out of your own pocket to help keep the lab open; is that right?

A Right.

Q And you were told that's not permissible, right?

A It was permissible in large sums of money for supporting animal research and things like that. But small amounts of money, I've always funded my lab. I've always bought equipment for my lab. I've always built tables for my lab. I even built furniture for my lab.

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Q Were you --

A From my own money.

Q Were you --

A And Columbia knew about it, because they didn't even give me furniture for my lab. So I bring my own furniture for my lab. So I built my own furniture for the lab when I started.

Q When they told you --

A I've always funded projects in my lab in little bits and bobs.

Q I'm just going back to when they told you -- when you had offered to fund your lab and they said no, the department doesn't do that.

Did anybody tell you but you can fund it a little bit out of some supplies?

A No. It was not an issue. It was an issue whether we are going to buy animals, pay for lab support, salaries of people, informalities. But everybody spent a little bit of money here and there to support research.

Q And does everybody not seek

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reimbursement for that?

A I don't know about other people. My thing was, the work should continue, and I should not get into a confrontational situation, so that the research can continue. And we are lucky that despite all these things, we have been able to identify new drugs and new molecules, and we are finding new ways to treat cancer.

Q Why do you say you were trying to avoid a confrontational situation?

A Because, basically, Dr. Brambrink has been hostile to me from the get-go.

Q "The get-go," meaning what?

A Since the first day I met him.

Q When was the first day you met him?

A I met him the first day when he came to visit my lab, and my lab --

Dr. Brambrink is a neuroanesthesiologist. I'm a neuroanesthesiologist. Dr. Brambrink is

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on the editorial board of JNA. I am on the editorial board of JNA. Dr. Brambrink serves under Society for Neuroanesthesiology. I serve under Society for Neuroanesthesiology. We have a lot of things in common.

So I was expecting that when Dr. Brambrink came to my lab, he would ask me some questions about the lab, and he was very frosty and cold.

And then when we met for the first time, which was in a formal meeting with all the neuroanesthesiology people, he was basically making cases. Whatever I would say, he would shoot me down. So I didn't find a very friendly atmosphere with Dr. Brambrink.

Q And when was he shooting you down?

A During a meeting, whenever I would make any suggestions, you know, he would overrule it or say something.

Q When did Dr. Brambrink become chair?

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Q And then you respond, "I am thinking of shutting down my lab. Let us see how things go in the next few days."

Do you see that?

A Yeah.

Q You also say that if you run out of money, you will pay from your pocket. And you also say, "I think Ansgar is not only unfair, but highly biased and arrogant."

Do you see that?

A Yes.

Q Dr. Brambrink had joined the department on July 1, 2016.

What was the basis for your conclusion, as early as September 2nd, that he was highly biased and arrogant?

A So Dr. Brambrink joined on July 1st. He had come to my lab before that. And when -- I followed it up with an e-mail.

So my area of research is to use advanced optics in neuroscience research, which means that we use light for high

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A Dr. Brambrink was -- notice for his appointment was around March or April of '16, and he joined on July 1st.

MR. SCHILLING: I'm going to ask the reporter to mark that as Joshi Exhibit 3.

(Whereupon, E-mail Exchange, Dated September 2, 2019, was marked as Joshi Exhibit 3 for identification, as of this date.)

BY MR. SCHILLING:

Q Dr. Joshi, I placed in front of you a document marked as Exhibit 3, which is an e-mail exchange between you and Dr. Emala, September 2, 2016.

Do you see that?

A Yeah.

Q In his e-mail to you, at the bottom of the page, Dr. Emala writes in the last sentence, "I just want to be sure that there is no pause in the ability to purchase stuff."

Do you see that?

A Yes.

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speed measurements of brain parameters and function. It is state-of-the-art technology. It means this is hot stuff in neuroscience research. And unlike MRIs and CT scanners, it is very quick, very fast, and a lot of data can be generated.

Anybody interested in neuroscience research would be impressed by what we have achieved and what we have reported and what we have developed. But there was no interest on the part of Dr. Brambrink for the research I was doing.

So first, when I wrote -- when Dr. Brambrink joined the department, he came to my lab, but there was no technical discussion about what I was doing, what my research is, what my plans are.

And I think I sent to him a link of some guy who was using similar techniques and was recording big breakthroughs in science with optical engineering and things like that. And I got no response with that either. Now, I

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am not certain whether that e-mail went through or not, but I certainly remember sending it to him. But there was no discussion after that.

Then we come to this meeting, which is called on the -- no, I already told you I have a relationship, sort of, through the institution with Dr. Brambrink, although not a personal relationship.

So when we walked into the new department -- after Dr. [REDACTED] stepped down, I was the most senior research guy on the neuro team. Dr. Brambrink had met with all of the other faculty members, who were senior members of critical care, cardiac, ICU. But definitely, he didn't meet with anybody on the neuro team.

So our first contact with Dr. Brambrink, which was formal, was at that meeting, which he called for the neuro group. And in that thing, he was basically shooting down whatever I said, and there was an air of hostility that I

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could palpate.

And in that meeting, Dr. Brambrink raised the issue of education or something, and then he said why didn't you work with Dr. [REDACTED]? You know, in some context, that thing came up.

So as a follow-up to that, I wrote an e-mail to Dr. Brambrink as to what my philosophy toward science is, how much my father's work has inspired me, and also my grandfather, who was the first surgeon, minority surgeon, to be trained -- the first minority surgeon ever to be trained in modern equipment. And those things are profoundly important to me, and research matters to me deeply, deeply. And I made it clear to him.

And then when he had said you worked with [REDACTED], I sent him the papers of Dr. [REDACTED] where the data simply didn't add up, meaning they were -- blatantly wrong data had been published. I sent that to Dr. Brambrink for him to read, and I printed the testimony he gave.

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He said he never looked at those papers. And this is after, in hindsight. But at that time, I was seeing -- you know, whatever I was seeing was not being entertained.

And then when we meet, he doesn't discuss what research I'm doing. It's all funding, and when will you shut down your lab, and how will you do it.

And I know that the department has supported labs for years and years and years without founding. Without funding. There were people who got no NIH funding for 10 years, and the labs were supported by the department.

Because once you create a lab, it's a machine. You just don't throw it into the wastebasket. You give it a chance to run, particularly for somebody like me who had been very productive in research.

And Dr. Emala certainly knew that NIH was saying Joshi, it doesn't matter. Keep going. Keep trying. This

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is a review problem. People have won Nobel Prizes, and they have struggled this way.

And Dr. Emala had seen all those e-mails, that, you know, in the NIH review process, sometimes creative research is very difficult to fund, because it's way out there.

And when I met Dr. Brambrink, it was stone cold. No, no, no, and then shut down the lab. That is why I was writing that note; I hope you'll understand why I used such hard words, because it deeply hurt me.

Q Who within the university has the authority to decide whether or not to keep a lab like yours open or to close it?

A Typically the chairman of the department is who decides it.

Q And with respect to bridge funding, what is bridge funding?

A Bridge funding is supposing you get funded for a certain time, and supposing the lab runs out of money, the

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department supports it for a while so that you can get funding. So, you know, people let labs continue or projects continue for a long time.

Q And it's in the discretion of the department chair to work bridge funding; is that right?

A Certainly. It is the discretion of the departmental chairman to support or not support a lab.

Q And your lab has been open for how long since your last R01 grant terminated?

A My R01 canceled -- actually continued when the shutdown was being anticipated. I was --

Q That wasn't my question.

My question was: After the --

A No, you used the word "funded." So the funding is renewed every year. So the last renewal of my grant was in 2016, which was the no-cost extension.

In terms of getting the grant funded or scored -- because every year,

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you have a renewal based on performances, right, so you apply for a no-cost extension. Your title also, in some ways, funded the project.

NIH can deny you funding for that year if they don't want to do it. So you give justification and you show progress, and they approve that budget. Now, the last scored grant was in 2010, '12, I think.

Q The no-cost extension extended until what date?

A My grant ran from 1 April to 30 March, so the no-cost extension was until March 30, 2017.

Q And that's listed here on your CV on page 4, right? It says March 31, 2017; is that right?

A March 31st, yeah. Not the 30th. It was the end of the month.

Q Since that time, have you been receiving bridge funding?

A Well, I got some supplies in the first year, because there was no money

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left after they deducted the entire cost and my salary and my technician's salary. And then I got funding for the second year, which was the year I just described to you.

And after that, no funding for supplies, but I did get nonclinical time, and I did get my lab had not been taken away, and my technician is still there.

Q And so that's all a part of bridge funding, right?

A Yes.

Q There's the cost of operating the lab, which is your assistant, the lab space itself, and then there's also supply costs, right; all of that is part of bridge funding?

A Yeah.

Q Under Dr. Brambrink, since he had been chair, is there anyone in the department who's gotten bridge funding for a longer period of time than you?

A I have no idea, because I haven't seen competitive fundings of all

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the faculty members or their funding status, so I cannot comment on that.

Q Do you have a belief one way or the other?

A No. I don't have it. But the reason that it was forwarded to me by Dr. Brambrink was not on the basis of what he had done, but was based on past records in the department. And he said that he had reviewed the funding parameters. First he said, right off the bat, that we are going to close your lab if you don't get funding by next year, which was in August of '17, right?

After that meeting was concluded, I went outside, and I had a separate talk with Chas Emala regarding how I am going to pull this off. He felt that it was not possible for me to meet the deadline, because grant funding takes so much time.

And at that time, you know, I trusted Chas Emala. I have a very complex relationship with Chas Emala as of now.

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But I trusted him, whatever he said and told to me, and I thought he was batting for me, and whatever he said was, you know, vetted and truthful.

So what I -- what happened in that meeting took me by surprise. But we said we'll still try. We'll still try. We have a cycle to go, and we'll submit a grant, and we'll go for it. And we went for it. But then, I later on realized that when Dr. Brambrink was saying that the bridge funding is based on past experience of the department, that was not a true statement.

Because when I went to the reporter website, which is the website that lists -- and Dr. Emala said it was one of the sources of determining bridge funding, the NIH reporter website, you know. I found that, you know, even Dr. [REDACTED] had no funding between 2014 -- 2012 to 2016, for four years, and he was allowed to continue research.

Q He was allowed by Dr. Wood?

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A Yes. But the statement that Dr. Brambrink was making was for the justification of closure of the lab, that we would agree to one year of bridge funding based on past departmental projects. It was not that this is my policy. It was -- this is what has been done in this department, which makes a whole lot of sense, because you're working for this department.

So looking at the past ERA data -- because the next time, when I met him in one of the meetings, I told him you can look at the ERA data. This thing has never happened before. And I challenged him on that.

The other thing that happened in that meeting, when you said that arrogant part -- if I can go back to that?

Q You can speak as long as you want, Dr. Joshi. I'm a little bit concerned that with the width and length of your answers; I don't want to have this run for a second day.

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A No, no.

Q But having said that, you can speak as long as you want.

MR. SCHILLING: I just want to make sure I reserve my rights.

A Did that answer your question with regard to bridge funding?

Q If you've felt that you've answered it, then you've answered it to my satisfaction.

MR. JEREMIAS: Listen to the question and then answer.

BY MR. SCHILLING:

Q Have you, yourself, ever done an analysis to look at gaps in other researchers' funding to compare yourself to others in terms of bridge funding?

A Yes. Within the department, yes, I have analyzed.

Q But you don't know whether or not under Dr. Brambrink if anyone else has had longer bridge funding than you?

A No. Because it was a time period that we are referring to. I

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haven't looked at all the people, because the department has changed, and I don't know all the people and their various funding mechanisms. I never looked at it. I looked at people who are my contemporaries, and that is what I found out.

Q In terms of the grants -- going back to page 4 of your CV -- it talks about past support. The most recent R01 ran through March 31, 2017, which we discussed.

Do you see that?

A Yeah.

Q Do you have any pending applications for grant support?

A Well, our project had a hit last year because of resources. But we have been able to have a breakthrough in drug delivery right now, which we are working on. And as soon as that data is validated, we will have another grant going.

But we'll see if it can meet the

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deadline for February. Otherwise, it will go on for another few months. But it is a novel technology for treating cancer. And if we succeed in it, it will have a huge impact.

Q What you're describing now is research you're conducting, and I guess my question was: Do you have any pending grants?

A Your question was, are you going to -- plan to apply for a grant?

Depending on --

Q No.

My question is --

A Not pending right now, but we're planning one.

Q That was my question.

MR. SCHILLING: Exhibit 4.

(Whereupon, Shailendra Joshi

Awards, FY2001-Present, was marked as

Joshi Exhibit 4 for identification, as

of this date.)

BY MR. SCHILLING:

Q Mr. Joshi, I'm placing in front

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of you a document marked as Exhibit 4, which I assume you have not seen before, since this is a document that we had prepared.

It purports on the first page to list awards since fiscal year 2001 to the present. And on the second page, it purports to list proposals by you from 2013 to the present.

Just focusing for a second on the second page, can I ask you to review that, and just tell me if it's accurate and up to date?

Because you see, on the bottom of the left-hand side, it says "Prepared by SPA on 7/17/2019," and it lists a pending grant proposal, submitted July 5th.

A It looks like my grant had been submitted to NIH.

Q Is the second page of Exhibit 4 an accurate list --

A Yes.

Q -- of the grant proposals

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submitted by you from 2013 to the present?

A It seems to be accurate.

Q The last one on this list, submitted July 5, 2018, is that one still pending?

A No. It was reviewed, and it was not funded. That's the same application.

Q When was that one decided?

A It was reviewed in '18, sometime in October.

Q And what was the outcome of that review?

A We got scored, but we were not funded.

Q And you have none pending at the moment, but you have plans to submit another one; is that right?

A Yes.

Q Do you remember what the scores were?

A Scores were about 42nd or 43rd or 41st percentile. Somewhere in that area.

Q And what's the significance of

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that score?

A It's difficult to get funding for that with that score. That's why it was not funded.

Q And is there a percentage of which it's easier to get funding?

A It varies from study section to study section. The cancer grants that are highly competitive are usually around 20th percentile.

Q And so if it's above the 20th percentile, the score, it's not likely to be funded; is that fair to say?

A No. It's below -- so it's 20 to 40. 40 is not likely to be funded. 20, if it's less than 20, it will be funded.

Q I see.

A And it varies from year to year, and I'm giving you numbers from the top of my head.

Q Okay.

So with respect to the second page of Exhibit 4, it's accurate, except that under current proposal status for the

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<p>1 CONFIDENTIAL</p> <p>2 final grant, it should say "not funded";</p> <p>3 is that right?</p> <p>4 A Yes.</p> <p>5 Q Turning back to the first page,</p> <p>6 which is awards, fiscal year 2001 to the</p> <p>7 present, is that list accurate and</p> <p>8 complete?</p> <p>9 A Yes. That's the NIH funding I</p> <p>10 got, but there were other grants also.</p> <p>11 Q In the period 2001 to the</p> <p>12 present?</p> <p>13 A Yes, yes.</p> <p>14 Q What other grants?</p> <p>15 A I had the institutional grants</p> <p>16 from Columbia University. I had Irving</p> <p>17 Assistant Professorships, which was</p> <p>18 funded, which paid money. I had FAER</p> <p>19 grants, I think, from 1999 or 2000,</p> <p>20 somewhere in that area, so on and so</p> <p>21 forth.</p> <p>22 Q Are those listed on your CV</p> <p>23 under "Past Support"?</p> <p>24 A American Pediatric Funding.</p> <p>25 Anesthesia Research Foundation was 2000.</p>	<p>1 CONFIDENTIAL</p> <p>2 they can do research in a dedicated lab,</p> <p>3 and then build up a lab, build up research</p> <p>4 program, so they can combine the clinical</p> <p>5 work with laboratory research.</p> <p>6 So it's one of the grants,</p> <p>7 because it's kind of an educational and</p> <p>8 training grant. It is basically giving</p> <p>9 you free time to do research.</p> <p>10 Q How much free time?</p> <p>11 A You have to have at least</p> <p>12 75 percent nonclinical time to do</p> <p>13 research, at least.</p> <p>14 Q Is that what people refer to as</p> <p>15 protected time?</p> <p>16 A Yes, it is protected. Because</p> <p>17 the whole idea is that you are free from</p> <p>18 of all the stresses, and you focus on</p> <p>19 research.</p> <p>20 Q Does everybody get those or --</p> <p>21 A No. It's very complicated,</p> <p>22 these grants, all these grants, because</p> <p>23 you need to have a good project, a good</p> <p>24 mentor, and a good environment to get it.</p> <p>25 Q And what's an R01 grant?</p>
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<p>1 CONFIDENTIAL</p> <p>2 Now this is 2001, right? You're talking</p> <p>3 about that?</p> <p>4 Q Yes.</p> <p>5 A Yes. So also, there was a</p> <p>6 Columbia Translational Research Program</p> <p>7 Infrastructure Support, which is 2000,</p> <p>8 2002.</p> <p>9 Q So the first page of --</p> <p>10 A So I virtually got every</p> <p>11 Columbia research award that you can think</p> <p>12 of.</p> <p>13 Q Who makes the decisions to award</p> <p>14 those?</p> <p>15 A The university's medical center.</p> <p>16 Q So in terms of Exhibit 4, is</p> <p>17 that list accurate with respect to awards</p> <p>18 from NIH?</p> <p>19 A Yes, those the NIH awards.</p> <p>20 Q What is a K08 grant?</p> <p>21 A A K08 grant is a special kind of</p> <p>22 grant that is given to physicians to turn</p> <p>23 into scientists. So the physicians,</p> <p>24 because they come from a clinical</p> <p>25 background, are awarded a K08 grant so</p>	<p>1 CONFIDENTIAL</p> <p>2 A R01 grant is when you become an</p> <p>3 established researcher. And when you</p> <p>4 become an established researcher -- there</p> <p>5 are two levels of R01. The first R01,</p> <p>6 they are relatively holding your hand, so</p> <p>7 they are more lax in funding you.</p> <p>8 And once you get funded, they</p> <p>9 become more tight on you. So there's two</p> <p>10 levels of that to escalate. So the first</p> <p>11 R01 is really easy, relatively speaking,</p> <p>12 but the second R01 is really tough. I got</p> <p>13 the second R01 also.</p> <p>14 Q How competitive are R01 grants?</p> <p>15 A Very competitive. Like, when I</p> <p>16 got it, I was in the 7th percentile.</p> <p>17 Q 7th percentile for which one?</p> <p>18 A For the one that was funded last</p> <p>19 time.</p> <p>20 Q "Last time" meaning most</p> <p>21 recently?</p> <p>22 A No, no. That was the one in</p> <p>23 2011, '12 or whatever.</p> <p>24 Q And do you remember what</p> <p>25 percentile you fell into for the other</p>

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<p style="text-align: right;">Page 50</p> <p>1 CONFIDENTIAL</p> <p>2 R01?</p> <p>3 A I think it was the 22nd or 20th</p> <p>4 percentile.</p> <p>5 Q How much research time does it</p> <p>6 take to develop a R01 grant proposal?</p> <p>7 A A lot of research time. I don't</p> <p>8 know how you would even quantify that, but</p> <p>9 it is a lot of work. It's just not -- you</p> <p>10 are bringing new ideas to the table.</p> <p>11 And the biggest problem that has</p> <p>12 happened with me is that my research is an</p> <p>13 alternate way of delivering drugs. But</p> <p>14 more than that, a lot of people tried this</p> <p>15 method and have failed. So I carry a</p> <p>16 baggage of bias against my research in</p> <p>17 some ways.</p> <p>18 At the same time, we have come</p> <p>19 with a totally different angle with</p> <p>20 advanced optics and developed tools, which</p> <p>21 are unconventional. So it takes a lot</p> <p>22 more effort than, you know, standard</p> <p>23 run-of-the-mill projects that are going</p> <p>24 on.</p> <p>25 Q Was there bias against your</p>	<p style="text-align: right;">Page 52</p> <p>1 CONFIDENTIAL</p> <p>2 imaging and device development. But they</p> <p>3 were not looking for cures for the</p> <p>4 disease. We have moved forward in</p> <p>5 developing compounds that actually treat</p> <p>6 the disease.</p> <p>7 Q So the research grants that you</p> <p>8 have been submitting more recently are</p> <p>9 different from the research grants that</p> <p>10 you were submitting back in 2008 and 2011</p> <p>11 in terms of the focus?</p> <p>12 A In terms of impact. Because now</p> <p>13 we are trying to treat cancer.</p> <p>14 Q And does that change in impact</p> <p>15 make it harder to get the grant funded?</p> <p>16 A To some extent, yes, but not in</p> <p>17 the totality of the situation. Whenever</p> <p>18 you look at project review situation, how</p> <p>19 a reviewer does it varies a lot. And the</p> <p>20 grants have to go to the right reviewer,</p> <p>21 the right conditions. All of the stars</p> <p>22 have to be aligned in some ways, because</p> <p>23 the system is so competitive, and a little</p> <p>24 failure can trip you.</p> <p>25 Q At the time you applied for and</p>
<p style="text-align: right;">Page 51</p> <p>1 CONFIDENTIAL</p> <p>2 research with respect to the R01 grants</p> <p>3 that you received?</p> <p>4 A There are various kinds of</p> <p>5 biases. One of them is subject bias, but</p> <p>6 that is compounded by the fact that brain</p> <p>7 cancer is very difficult to treat, and a</p> <p>8 lot of people have failed in treating</p> <p>9 brain cancer.</p> <p>10 So right off the bat, when an</p> <p>11 anesthesiologist tries to wave his hand</p> <p>12 and say "I'm going to find a cure for</p> <p>13 brain cancer," it flashes red lights all</p> <p>14 over.</p> <p>15 Q Why is that?</p> <p>16 A Because usually</p> <p>17 anesthesiologists don't treat brain</p> <p>18 cancer. You don't go to an</p> <p>19 anesthesiologist to say "I have brain</p> <p>20 cancer. Please treat me." So why should</p> <p>21 anybody fund research to somebody who is</p> <p>22 just an anesthesiologist on paper?</p> <p>23 Q What was it about the R01 grants</p> <p>24 that you received --</p> <p>25 A They were more in optical</p>	<p style="text-align: right;">Page 53</p> <p>1 CONFIDENTIAL</p> <p>2 were awarded the two R01 grants on</p> <p>3 Exhibit 4, your title was assistant</p> <p>4 professor?</p> <p>5 A I was assistant professor, but I</p> <p>6 was, I think, using my title or that</p> <p>7 title, because I was a Herbert Irving</p> <p>8 assistant professor.</p> <p>9 Q You were?</p> <p>10 A Herbert Irving. I was titled an</p> <p>11 assistant professor to look more</p> <p>12 impressive on the resume. There was no</p> <p>13 deadline on that thing, and I had not been</p> <p>14 promoted, so I -- I think I used that.</p> <p>15 Q And the Herbert Irving title, is</p> <p>16 that something you held up until your more</p> <p>17 recent promotion?</p> <p>18 A There's no deadline on that.</p> <p>19 The Herbert Irving funding was in 2006,</p> <p>20 2007, you know, to -- for the thing. But</p> <p>21 there's no -- you know, I wasn't a Herbert</p> <p>22 Irving professor, so I used that title.</p> <p>23 Q But your official title at the</p> <p>24 university was assistant professor at the</p> <p>25 time?</p>



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A Yes.

Q In the period 2008 to 2011, did you have any joint appointments?

A I was offered a joint appointment in the department of radiology.

Q My question was: Did you have any joint appointments?

A No. It was turned down by the department, but I was offered a position in the department of radiology as a joint.

Q And it was turned down why?

A Dr. Wood turned it down for whatever reason.

Q And why did she do that?

A I have no idea.

Q What's a T32 grant?

A I have no idea. T32 is a training grant, which Dr. Emala has, but I'm not privy to what specifications or requirements. That is because I've never applied for the T32 grant.

Q Were T32 grants not available to you?

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A No. It's basically ran by the department. It's a departmental project. There's one T32 for the whole department, and Dr. Emala has been running that.

Q Did you ever apply for a T32 grant?

A No. From my understanding, it's this one grant, and it's been running for many years. Dr. Fink used to run it before Dr. Emala. And it's departmental funding.

Q Is it NIH-funded?

A It's NIH-funded. It's for training residents and fellows who are going to do research. That's my understanding of it.

Q And so it wouldn't be something that you would seek after you became a faculty researcher, because you weren't a fellow at that point; is that right?

A No. I didn't -- I think this was -- my focus was very narrow, you know. I was in a very tough situation, fighting a very tough disease. There was a passage

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to R01. I had enormous support at the National Cancer Institute.

I can show you letters -- even after these failures that you have shown me -- telling me don't give up. This is a reviewer problem. Continue doing this research.

This guy was with me. He was rejected eight times and went on to win the Nobel Prize. I can show you those e-mails.

So yeah, you are showing me these unfunded letters. But I can tell you, sometimes very creative research is very difficult to fund and break through. So everything has to work right. I'm sorry to --

Q That's all right. I'm not asking questions to be critical of your research.

A No, it is reality. It's tough. If you write research, which everybody is doing, it's very easy sometimes.

Q So do you know who in the past

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few years within the department has had a T32 grant?

A I have not been involved in T32. I'm sorry.

Q Do you know what the protected time is on a T32 grant?

A No, I do not.

Q What's the protected time on the R01?

A R01, so there are two parts of R01. One is the R01, which is designated by the funding mechanism. So it's 30 percent nonclinical time. Now, R01 also pays cost to the department, so there's a second budget.

Most departments pitch in. You know, when they have some surplus money, they give you time. So most R01 people get as much nonclinical time from the department as they get from the grant itself, traditionally.

So when you are a R01 -- because you're contributing to the department, you know, because the indirect costs go to the

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department. So there are two components of R01 funding; whatever you get from the NIH, and the chairman can decide to give you 30 percent of that time.

But also, what the department usually gives -- departments want R01, because when they put out their -- you know, there's an annual -- how much NIH funding that each department has is considered prestigious.

Q Have you ever received less than 30 percent nonclinical time?

A Less than -- I think one tough situation I was in was November of 2015. It was the month I was on vacation, but I had been called back from vacation. And I was assigned to ECT, which was a busy service, and I was assigned to clinical days. And at that time, Dr. Wood considered ECT as half research days.

So if you mathematically see it, yes, I did get -- there was an occasion when I got less than 30 percent time. Because ECT days, as I explained to her,

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were very aggressive. They are basically write-out days. You cannot do research because the load was so high. And the department still counted that as half nonclinical days.

Q But that's a technicality. Now you're calculating.

You're on vacation on that month, so you're not assigned any nonclinical time in November, right?

A No, no.

MR. JEREMIAS: Objection to the form.

You can answer.

Q Isn't it true that you're not assigned any nonclinical time in November because you're on vacation?

A No. Vacation is totally different. Whenever you apply for vacation, vacation is not a period included in your time calculations. That way is to be very convenient. It means to include all your research time as vacation time and say oh, you do vacation research.

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That's not the way it works. Vacation time is separate.

You may put your vacation time into research, like I do sometimes. I do projects related to research. And that is why when you see that -- you know, raise the question of biotech research time in November, it's because there are other projects I want to do at a slower pace related to work.

Q Other than November of 2015, was there ever any other time where you had less than 30 percent nonclinical time?

A I don't think so.

Q And we'll come back to that.

MR. SCHILLING: Exhibit 5.

(Whereupon, E-mail, Dated September 7, 2016, was marked as Joshi Exhibit 5 for identification, as of this date.)

BY MR. SCHILLING:

Q Mr. Joshi, I've asked the reporter to mark as Exhibit 5 a one-page e-mail, with the Bates number ending in

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2015. It appears to be an e-mail from Dr. Emala, September 7, 2016.

Do you see that?

A Yes.

Q Do you recognize this e-mail?

A Yeah.

Q Did you send it?

A Yes.

Q And the second sentence, it says, "I am now convinced that the three are working together to harm me," in reference to Dr. Brambrink, Dr. Gaudet and Dr. [REDACTED].

Do you see that?

A Yes.

Q Who is Dr. Gaudet?

A He was a neuro attending, who was the right-hand man of [REDACTED]. And after Dr. [REDACTED] left, he was taking administrative responsibilities. The interim chair was Dr. Gene Ornstein of neuroanesthesia, but Dr. Ornstein was away most of the time.

Q I'm sorry, Dr. Ornstein was

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2 interim what?

3 A Interim head of the  
4 neuroanesthesia division.

5 Q So between Dr. [REDACTED] and  
6 Dr. Garcia?

7 A Yes. But he was only -- as he  
8 had said in an e-mail, he had no  
9 administrative responsibilities. Those  
10 responsibilities resided with Dr. Wood and  
11 Dr. Mercer.

12 Q What period of time was he the  
13 chair of neuroanesthesiology?

14 A I think December 31st is when  
15 Dr. [REDACTED] left, of 2015. So January 1st  
16 until when Dr. Garcia joined.

17 Q What do you think of  
18 Dr. Ornstein?

19 A He's been a friend of mine. We  
20 got on reasonably well together. And we  
21 may have small differences here and there,  
22 but we work together, help each other out  
23 in the operating room. And generally,  
24 he's a friend. I consider him a friend.

25 Q When he became acting division

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2 chief, did you think he was not qualified  
3 for that job?

4 A No. He had done that before.  
5 The only problem was that most of the  
6 time, he was away in Israel. So it's  
7 15 days -- approximately 15 days in  
8 New York and 15 days in Israel.

9 Q But during that time, it was  
10 Dr. Mercer and Dr. Wood who were doing the  
11 administrative part of that job?

12 A No. He was -- he categorically  
13 stated in an e-mail that I have nothing to  
14 do with administrative responsibility.  
15 All administrative responsibilities are  
16 with Wood and Mercer.

17 Q Have you discussed with  
18 Dr. Ornstein what administrative functions  
19 he performed during that time period, or  
20 were you relying just on his e-mail?

21 A No, no. The issue of  
22 administrative issues came up during that  
23 time, and he categorically stated that he  
24 was only there to make the schedule.

25 Q Why were you convinced, as of

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2 September 7, 2016, that Dr. Brambrink,  
3 Dr. Gaudet and Dr. [REDACTED] were working  
4 together to harm you?

5 A I already told you my  
6 interactions with Dr. Brambrink. And the  
7 most disturbing part for all of us in  
8 neuroanesthesia was that when we met him  
9 for the first time, Dr. Brambrink had not  
10 talked to anybody in the neuroanesthesia  
11 division, you know, none of them. Even  
12 John Gaudet, he did not talk to. So on  
13 that day, when I wrote this e-mail, there  
14 was a grant round.

15 Q There was a what?

16 A A grant round. And as  
17 Dr. Brambrink has said in his testimonial  
18 subsequently that he did not know  
19 Dr. [REDACTED] that he had retired previously.

20 But when I saw the interaction  
21 of these two guys, it was exceedingly  
22 friendly, and they were in the mix. These  
23 three were on one side of the grant round,  
24 talking to each other in a very friendly,  
25 chattery way. And that is why I made that

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2 association.

3 Q And --

4 A And also given the hostility he  
5 had shown toward me. By this time, the  
6 meeting had already occurred. He did not  
7 talk of research. He was talking about  
8 shutdown of my lab and all these things.  
9 And he had also told me that I will not be  
10 the division chief of neuroanesthesia,  
11 without giving me any reason.

12 Q He told you that by September 7,  
13 2016?

14 A Yeah. In that first meeting, I  
15 think.

16 Q When was the first meeting?

17 A August 16th or 17th.

18 Q Did he tell you why?

19 A Yes. He said he wanted a young  
20 person to run around.

21 Q As the chief of  
22 neuroanesthesiology?

23 A Yes.

24 Q Tell me about that conversation.

25 A So basically, when we met for

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2 the first time in that meeting,  
3 Dr. Brambrink said that those interested  
4 in the division chief position -- there  
5 would be a search for a division chief  
6 candidate, and those people who are  
7 interested should contact him.

8 And as a follow-up of that, I  
9 think on August 3rd, I wrote my letter  
10 saying that I'm interested in this  
11 position. Now, after that, I've read a  
12 lot of e-mails of the time period, so I'm  
13 not factoring that into account.

14 When I met him in the meeting,  
15 he was very aggressively questioning my  
16 research in terms of funding, and he  
17 categorically said no, not the division  
18 chief position, because I need a young  
19 person to run around.

20 Q To run around?

21 A You know, because he said it  
22 involved more. Something to that effect.  
23 Because it means involving contacting  
24 people, traveling or whatever.

25 Q Does it sound about right that

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2 you sent an e-mail to Dr. Brambrink on  
3 August 3, 2016 expressing interest in the  
4 division chief position?

5 A Yes, yes. And I told him that I  
6 would handle everything very differently,  
7 make it fair, give everybody a chance, and  
8 everybody would be treated fairly. That  
9 is my recollection of that e-mail of him.

10 Q Separate and apart from what you  
11 have learned from sitting through all the  
12 depositions and looking at e-mails in this  
13 case, were you aware, at the time, of who  
14 was in the running to be division chief?

15 A They had actually started  
16 interviewing people even in -- before  
17 Dr. Brambrink came.

18 Q How do you know that?

19 A I believe there was a candidate  
20 who was a fellow in our department, who  
21 had visited the department. I forget his  
22 last name, but his name was David. I'm  
23 forgetting his name. I was trying to  
24 recollect it. But they had interviewed,  
25 probably, some people before.

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2 Q From the time that Dr. Brambrink  
3 joined, it would be his decision as to who  
4 the division chief was going to be, right?

5 A Right.

6 Q From that point, do you know who  
7 was actively considered by Dr. Brambrink  
8 for the position of division chief?

9 A Not referring to what I've read  
10 from the thing?

11 Q Right.

12 A There were flyers that came  
13 saying X candidate is interested. And  
14 usually when people apply for this  
15 position, they take electorships, and a  
16 flyer goes out saying this is a candidate  
17 for this position. I don't remember the  
18 names, but people were being interviewed,  
19 and they were visiting at the center.

20 Q Since you were present at  
21 Dr. Brambrink's deposition, do you recall  
22 him testifying that he was only interested  
23 in someone from outside the department; do  
24 you remember him saying that?

25 A Yes, certainly.

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2 Q Do you believe that's not true?

3 A Absolutely.

4 Q Why?

5 A Because he appointed another  
6 head of obstetrics, who was from the  
7 department. We have a -- so Dr. Richard  
8 Smiley was head of obstetrics, and he was  
9 asked to step down, and somebody else from  
10 the department took over.

11 Q But with respect to the division  
12 chief position --

13 A Division chief of obstetric  
14 anesthesia.

15 Q The position that Dr. Garcia  
16 filled?

17 A That is for neuro.

18 Q That's what I'm asking you  
19 about.

20 A No, no. But they are different  
21 people. They are different divisions in  
22 the department.

23 Q Right.

24 And Dr. Brambrink testified that  
25 for the division of neuroanesthesiology,

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he wanted someone from outside the department?

A Yes. But at the same time, what he told us in the meeting was if any of you are interested, you also should apply.

Q And he ultimately selected someone from outside the department, yes?

A Yes. But the thing was that what he told us was different. He told us categorically, if you're interested, you can apply.

Q Do you believe that Dr. Garcia was not qualified for that position?

A No. Garcia is a talented guy in his own way, and everybody is different. Is one painting better than the other? It's how you judge it. There's subjectivity in that.

Q That's for --

A Everybody has different strengths.

Q Do you think that Dr. Brambrink gave the job to Dr. Garcia rather than you in retaliation for your complaints of

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research misconduct?

A I would certainly say he didn't give me a chance at all. It means, I do not know, compared to Dr. Garcia. I'm not in any position to make that comparison. But I certainly think he never gave me a consideration for the job, because he never discussed it with me. He just outright said no.

Q But do you know why he didn't consider you for the position?

A Well, they have been giving different reasons, right? One of the reasons -- now, can I go to the testimony or?

Q No.

I'm asking you what you believed at the time.

A No. I thought I was a serious candidate. Look, I have licenses in three countries, medical licenses. I'm board certified in anesthesiology in three countries.

I worked at with -- at All India

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Institute of Medical Sciences of New Delhi, where I worked with the guys who did the first heart transplant, the first guys to do a liver transplant, the first guys who set up the foundation of neurosurgery and anesthesia. My mentor was Dr. Samy (phonetic), who set up the first neurosurgical critical unit.

I went to Britain, which brought me to the notice of top British anesthesiologists, Mapleson and Bain, who are, like, the icons of British anesthesia.

I come to Columbia. I work with Bill Young. You guys look at Bill Young, and you see how powerful that guy is. He died of cancer very young. That's the sad part of the story with Bill Young. And we were very productive.

I've gotten \$5.2 million funding in NIH funding over time, the total of this, plus other grants. Dr. Brambrink, for instance, has one year of NIH funding and 52,000 in grant money from NIH.

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Dr. Garcia doesn't have any NIH funding, to my best knowledge. There is a Veterans Administration grant with amount unknown, but there is no money there from the NIH.

I have been on the editorial board of JNA for almost 15 years, and a section editor for their laboratory sciences for about a decade. I've contributed book chapters to all the major testaments across several editions. I've mentored neurosurgeons.

It means, you name it, I've done it. And not to be given a consideration, just because I cannot run around, was a shock to me.

Q So do you believe you were denied the position --

MR. JEREMIAS: We should take a break, just a quick break.

MR. SCHILLING: Can I finish the sentence?

MR. JEREMIAS: Well, I was going to ask before you started to ask your question.

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MR. SCHILLING: Fine.

(Thereupon, a recess was taken,  
and then the proceedings continued as  
follows:)

BY MR. SCHILLING:

Q Dr. Joshi, why were you  
interested in the position of division  
chief?

A Well, I wanted to do things  
differently. I wanted to build a better  
research program. I had a very powerful  
lab, which had not blown up in terms of  
younger faculty coming there.

And the research I'm doing can  
be projected many years into the future,  
because the technologies we are developing  
have implications of stroke treatment, for  
cancer treatment and a variety of other  
treatments.

And these could be individual  
projects that young faculty could take  
over, and then develop a program that  
would run and be viable for many, many  
years forward.

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Q Is there more money associated  
with the division chief position?

A I don't know how much, but there  
must be some.

Q Do you know if there's any?

A I never looked into that. I was  
more interested in the academic part of  
that, in terms of pushing the research  
forward. But there are perks of division  
chief.

One, you are noticed. Your  
research is a higher profile. You get  
secretarial help to do a lot of work. And  
more important, you can guide young  
faculty, so you have better chances of  
doing collaborative research and reaching  
out to people. So there are indirect and  
direct benefits to research.

Q It's an administrative job, is  
it not?

A It's administrative, but it's  
also that you are representing the  
flagship of Columbia University, and  
you're representing your research. That

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comes together. It means, when you are a  
division chief, you generally have a  
research program also with it.

Q The reason I ask about your  
interest is because looking back at a lot  
of the e-mails in this case, my impression  
was that you were focused, like a laser,  
for most of the time in trying to maximize  
your research time.

But taking on an administrative  
function as division chief would cut into  
your research time, would it not?

MR. JEREMIAS: Objection to the  
form.

A Can you repeat that?

Q Would taking on the position as  
division chief cut into your research  
time?

A Not really. If you balance  
research -- because particularly, our  
program was going to shift into  
translation research, as I could foresee  
it.

So you could actually help your

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research by becoming a division chief  
because you had certainly more accesses to  
the ground forces to do clinical  
translation and clinical research. So in  
the big picture of things, yes, there are  
times when laboratory research is  
important.

But now that we have already  
developed drugs, and we are trying to  
looking into clinical translation and  
human devices, you know, you could do some  
of the research, like Dr. [REDACTED] used to  
do, in the operating room also. So it  
would work both ways.

Q Dr. [REDACTED] also handled  
administrative functions, did he not?

A Yes.

Q Do you know how much time he  
spent on --

A I have no idea.

Q -- administrative functions?

A I have no idea, because  
Dr. [REDACTED] was virtually in every committee  
of the department, so his was a

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disproportionate amount unrelated to neuro also.

Q So at the time you expressed an interest, you didn't know how much time would be required of you for the administrative part of the job?

A No. I had a general idea of what to do. Most of the people are doing scheduling, because I've seen Gene Ornstein, what he does. And occasionally, you interview people, and you meet people who are visiting in the department. I do not think it's a very large amount of administrative time.

Q And how were you harmed by not being appointed division chief?

A How was I harmed? First and foremost, all the future research that I was planning to do, the books I was trying to write, the program I wanted to develop, all those things are now gone forever.

Q Why?

A Because I'll never be the division chief again. The post is already

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given out.

Q I'm not sure I follow.

Why was your not being appointed to division chief relevant to the things you just mentioned?

A Because it would be very difficult to now coordinate with other junior faculty who are in the department, because they are committed to their own research lines, developing the next generation of people. It's much easier for a division chief to nurture people than somebody who is in the peripheral of it.

Q So not being division chief prevented you from nurturing younger scientists?

A In some ways, yes. Because the next generation of people that are going to take over would be affected in terms of bringing people in. Like, I've been trying to bring people in neurosurgery, because I don't have so much access to the faculty over there in anesthesia. And

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that is one of the issues.

With regard to -- I did see the recruitment package that was put together for Dr. Paul Garcia. I don't remember the exact details, but it was a substantial amount of money they were giving out for developing the program.

And the other thing is, when you look at the advertisement of division chief, it promised a lot of funds for developing programs, contrary to what Dr. Brambrink mentioned in his testimony, that you should have funding.

If you look at the advertisement that is placed in the journal, there is no mention of "that you should have funding." In fact, it says that we will give you a lot of funds to develop programs. So that is a financial loss.

Q Is that a financial loss to you?

A Well, if I was elected division chief, some of the money could have come to develop the program also. There was no mention in the advertisement of the

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division chief that there should be funding. There is mention that funds will be available for developing programs.

Q But these funds are not going to Dr. Garcia personally, right?

A It's going to his research program, to his lab.

Q His research program?

A Yes.

Q And so if you had gotten the position of division chief, it wouldn't have benefited you personally; it would have benefited your research?

A It would have benefited my research, could have. I don't know what the parameters are, but we are just debating what was published in the abstract -- in the advertisement.

Q So you're relying on what was in the advertisement as to what the financial impact to your research would have been?

A It could be. You know, take the whole package together. It means it could have been, had I been given a fair shot at

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the division chief position, which I did not get for whatever reason.

My belief is it's because there was bias against me for raising concerns with [REDACTED] research. Now, had I got that chance to be the division chief, it would have helped me in many ways.

Look at the package of recruitment they offered Dr. Garcia. Instead of shutting down my lab, some of that money could have helped me stabilize my program, apply for new grants, get new people involved, develop a new research program.

Q Why do you think Dr. Brambrink was biased against you because of your research misconduct complaint?

A Well, I would have expected -- I think I met Dr. Brambrink once before at the SNAC meeting, and he came to me to discuss something about opposites-related. I may be wrong in this, because it's a vague recollection.

But I am well known in the

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neuroanesthesiology society, perhaps one of the most prolific presenters in their annual meeting. And I would have expected Dr. Brambrink to, at least, reach out and talk to me in a fair way. What are you doing? What is your research? What are your plans? That did not happen.

What happened was, when do we shut down your lab? What are your plans when you lose all the funding? Right off the bat, I was never given a fair chance.

Q I guess my question is: Why do you attribute that to the research misconduct complaint that you filed? Did he ever say to you I'm mad at you for filing that research misconduct complaint?

A To my best knowledge and belief, Dr. Brambrink has never made any such statements directly. However, when I sent him the paper about Dr. [REDACTED], he did not come back to me.

If I tell a chair that I brought concerns about somebody's academic paper, I would expect the chair to come back to

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me and say what are those concerns? What is it that you are trying to tell me over here? Dr. Brambrink never did that, and Dr. Emala also never did that.

Q He never did what?

A He never came back to me to explain what the inconsistencies were in Dr. [REDACTED] papers were.

Q I'm going to say, yes, he did?

A Absolutely not. Absolutely not. Absolutely not. We had only one meeting regarding Dr. [REDACTED] papers, which was the first and the only meeting, and Dr. Emala has testified twice that he came to me and asked about the control groups, and he never raised the issue about controls, period.

So whatever he is saying -- the control problems were raised only after, in the last year, after I met the investigative team, when I found that even the control group was not right.

At the time I talked to Dr. Emala, e-mails clearly will show you

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that what I was saying was that [REDACTED] is claiming that he is doing this extensive neurological testing in critically ill patients. These patients have severe problems postoperatively. And he is reporting complete data sets. This is clinically and statistically impossible. That was my complaint.

What Dr. Emala has testified to repeatedly over here is a frank, false statement. Now, he may be mistaken about something, but the fact remains that Dr. Emala never, never came back to me.

Q Do you believe that Dr. Emala has retaliated against you because of your complaint of research misconduct?

A Dr. Emala, as I said, was a complex personality, so I'm not going to judge him. But we can only look at the facts. The facts are that when I raised complaints about Dr. [REDACTED] papers, nobody in the department ever reached back to me, period. That is -- those are the facts.

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Q When you first raised the issue of research misconduct with Dr. Emala back in the end of 2014, he offered to meet with you?

A Yes, after that meeting we had at the end of December, early '15, which was probably around Christmas time. So I'm not certain of the new year or -- that was the only meeting we had, in his lab, on the side room of his lab, in which I explained what my concerns were. But after that, I got no feedback from Dr. Emala.

In fact, Dr. [REDACTED] testified that he didn't want to talk to me about research, and he didn't want to give me written e-mail responses. But I had offered Dr. [REDACTED] the opportunity to go to Dr. Emala and to discuss his research and come back to me, and I never got any feedback.

You can see e-mail track after e-mail track in which I've said please explain this to me, CC Dr. Emala. But

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there was no response from Dr. [REDACTED] by [REDACTED] -- by Chas Emala.

Q Dr. [REDACTED] said I'd be happy to meet with you, did he not?

A Dr. [REDACTED] has a problem with what he says in verbal communications. This is documented in my e-mails in the past.

Q My question was: Did he say to you? After you raised the issue with him directly in December 2014, did Dr. [REDACTED] respond to you I'm happy to meet with you?

A He said that in an e-mail.

Q Yes.

Did you --

A But I responded back to him. I said please do it in writing. And the reason I said that to him was primarily because Dr. [REDACTED] said statements and then denied it in the past.

Q So you refused to meet with him?

A No. I told him -- I gave him the option; if you want to do it, do it through Chas Emala. Let's settle it

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through Chas Emala. You explain it to Dr. Emala, and Dr. Emala can explain it back to me.

Q Let's go --

A So I gave him the chance of doing it.

Q Let's go back to where we started this conversation, which was about the division chief position.

And I was asking you why you believe that Dr. Brambrink had a motive to retaliate against you because of your research misconduct complaint, and you told me that you had sent him the information about Dr. [REDACTED] and he did not respond.

Was there any other thing Dr. Brambrink did or said that led you to think that his motive not to give you the division chief position was based on the fact that you had complained about Dr. [REDACTED]

A The fact of the matter is, whenever I met Dr. Brambrink, prior to

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even that meeting, in e-mail, he was not -- he was telling me why didn't I work with Dr. [REDACTED]

Q He was telling you what?

A He was, one, hostile toward me in attitude. He did not discuss research with me, at any point in time, seriously. He was focused only on the failures. He was trying to bring out negative things about me.

And he had basically -- you know, when I asked for division chief, he didn't even talk about it. It was just off the bat, no.

Q Other than that, do you have any other basis to believe that his motive in not giving you the division chief position was your complaint against Dr. [REDACTED]

A Absolutely.

Q Yes?

A I believe that if somebody in a rational mind comes to you, as a colleague from the same specialty, you will extend the offer of listening to his side of the

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story, rather than bang the door in his face. That is expected.

I know Dr. Brambrink mainly through society. We do not know personally, but through society, we know. If I make an allegation, and if I said these papers -- and I deliberately did not give an opinion, because I did not want to bias him. I wanted him to draw his own conclusions.

And I gave him two start papers, and the data from the two sets of papers was so different that it was practically irreconcilable. One of the data sets has to be seriously faulty. It was like day and night. And he didn't even bother to read it.

But then when we met him later on August -- you know, the meeting in August '16, he is overtly hostile toward me, almost like being sarcastic.

Q How would you describe his personality, generally?

A I have lost trust in my judgment

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of people in some ways. He does look very friendly. He comes off friendly, but his actions don't match what his appearance is.

Q When you sent Dr. Brambrink the material about Dr. [REDACTED] what did you say in the e-mail?

A I basically said that look, you can trust these two papers and draw your own conclusions. I left it, because Dr. Brambrink is on the editorial board. He's a researcher. He's a PhD. When I sent those papers, it should be obvious to even a high school student that there's a problem here.

Q At the time, was your complaint of research misconduct pending with the committee?

A I don't know. This was in '16, right? In '16, what happened?

Q You filed your complaint of research misconduct in April of 2015, and it was resolved in September of this year; is that right?

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A No. But there were many intervening steps, right?

So initially, Columbia protracted a review process, a prereview process, which lasted until December. And at that time, Dr. Wood was there. And then, I believe, in January of that -- in December of that year, there was a formal investigation, if I'm not misrecollecting.

Then, I think, in -- so in August, this would be in the inquiry phase, when they talk to you. And that was it. At that time, it was still not resolved. It was still up there.

Q It was still under review at the time you sent this information to Dr. Brambrink?

A Yes.

Q Did you want him to investigate it?

A I certainly wanted a chairman to be curious about somebody very senior having a problem, particularly when he's recommending that Dr. [REDACTED] -- you should

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have worked with Dr. [REDACTED]

If you make a statement of that magnitude for a senior faculty, and you're saying why didn't you work with Dr. [REDACTED] that was my answer. And he never followed that up.

Q Well, how long has there been bad blood between you and Dr. [REDACTED]

MR. JEREMIAS: Objection.

A I do not know what you mean by "bad blood."

Q Can you --

A If you --

Q Tell me about your relationship over time with Dr. [REDACTED]

A There's a professional aspect of the relationship, which comes with clinical care of the patient and, you know, working in the OR, helping in the OR.

I'm generally considered to be a very good guy in placing IV lines and putting arterial lines, because I do a lot of animal research. So often, when other

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1 faculty members have problems, I step in  
2 to help them out. And whether it's [REDACTED]  
3 [REDACTED] or X-Y-Z, whoever is there, cardiac,  
4 neuro, I just love helping out people in  
5 the operating room. So when it comes to a  
6 professional relationship, I have no  
7 problems with [REDACTED].

8 The only problem I had with him  
9 was [REDACTED] sometimes would, kind of,  
10 put me down by loudly talking to me in  
11 public. And he knew I did not like that  
12 interaction, so I would go out of my way  
13 to avoid it, because it was more of a  
14 put-down. But even that, I said [REDACTED] that  
15 it doesn't matter. You and I can  
16 communicate with e-mails. We can sort the  
17 issues out. We can deal with things.

18 And, in fact, you know, whenever  
19 there was a problem in the -- related to  
20 the patient, I would be the first one to  
21 tell him, even before anybody would  
22 communicate with him, [REDACTED] this happened.  
23 Let's figure it out. This was the  
24 problem, right?  
25

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1 So I had no problems  
2 professionally, in some ways. But at the  
3 same time, personally, I did not trust  
4 him.

5 Q And your lack of trust in  
6 Dr. [REDACTED] goes back well before you filed  
7 a research misconduct complaint against  
8 him in 2015, right?

9 MR. JEREMIAS: Objection.

10 A It began when he had been  
11 threatening me for raising issues  
12 regarding nonclinical time, and then he  
13 denied it.

14 Q When was that?

15 A That was 2006, 2007. Somewhere  
16 in that time frame. Because that was  
17 really hurtful to me because some of the  
18 language he used was very, very harsh.

19 But, you know, the fact that I  
20 have a personal disagreement with somebody  
21 does not mean our professional lives  
22 cannot continue, and I want to make that  
23 distinction. So in the professional  
24 world, I will definitely work with him.  
25

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1 But in the personal world, I keep away  
2 from him.

3 Q You don't trust him; you think  
4 he's a liar?

5 A I don't -- "liar" is a little  
6 bit of a hard word, but I would not trust  
7 anything he does.

8 Q It's your word. I have some  
9 e-mails --

10 A Yeah. But I wouldn't trust  
11 anything he does.

12 Q And the animosity between you  
13 and Dr. [REDACTED] goes back to, like, 2005,  
14 right?

15 A No. It's not animosity in the  
16 sense that it's, like, you know, it is --  
17 because it's not facts-based. You cannot  
18 trust a guy who says I did this, and then  
19 backs away with it. It erodes your trust  
20 in the person.

21 Q Let me go back to the division  
22 chief position, just to exhaust that  
23 issue.

24 Anything else about your  
25

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1 interactions with Dr. Brambrink that led  
2 you to believe that the reason you didn't  
3 get the division chief position was  
4 because you filed a complaint of research  
5 misconduct against Dr. [REDACTED] other than  
6 what you've already testified?

7 A I can't recall at this moment,  
8 but I would look back and reflect upon it,  
9 because we have interacted. My main thing  
10 was that he was very negative from the  
11 get-go.

12 Q You've reflected upon this case  
13 for a long time, haven't you?

14 A I have. But in terms of  
15 questioning, I -- you know, specifically  
16 in an area, I have to think about it, if  
17 there was any other interaction which I'm  
18 missing at this point.

19 MR. SCHILLING: Exhibit 6.

20 (Whereupon, Excerpt From  
21 Columbia University Faculty Handbook  
22 2008, was marked as Joshi Exhibit 6  
23 for identification, as of this date.)

24 Q Dr. Joshi, I'm handing you  
25

25 (Pages 94 to 97)

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Page 98	Page 100
<p>1 CONFIDENTIAL</p> <p>2 what's been marked as Exhibit 6, which is</p> <p>3 an excerpt from a Columbia University</p> <p>4 Faculty Handbook, 2008. The first Bates</p> <p>5 number is CU12288.</p> <p>6 Do you have that document in</p> <p>7 front of you?</p> <p>8 A Yes.</p> <p>9 Q I'll represent to you,</p> <p>10 Dr. Joshi, that the exhibit is an excerpt</p> <p>11 from this bound book, which I'm holding in</p> <p>12 my hand, which is a bound faculty</p> <p>13 handbook, 2008.</p> <p>14 I guess my first question is:</p> <p>15 Have you ever seen this book that I'm</p> <p>16 holding up?</p> <p>17 A It's in my office.</p> <p>18 Q How long have you had it?</p> <p>19 A I've had it for a while, since I</p> <p>20 joined the faculty, perhaps. Some version</p> <p>21 of it.</p> <p>22 Q There was a prior version of</p> <p>23 this. This is dated 2008. You joined in</p> <p>24 1997.</p> <p>25 Did you have both versions in</p>	<p>1 CONFIDENTIAL</p> <p>2 A Yes.</p> <p>3 Q -- is in this manual?</p> <p>4 A Yes.</p> <p>5 Q Were you aware that this policy</p> <p>6 was in this book?</p> <p>7 A I don't recall. I saw it,</p> <p>8 basically, from the website.</p> <p>9 Q When was the first time you</p> <p>10 ever -- or, I should ask, have you ever</p> <p>11 read the Columbia University Institutional</p> <p>12 Policy on Misconduct and Research?</p> <p>13 A Yes, I did.</p> <p>14 Q When was the first time you read</p> <p>15 it?</p> <p>16 A I think I probably read it when</p> <p>17 I was asked to testify in a case of</p> <p>18 research misconduct.</p> <p>19 Q When was that?</p> <p>20 A That was when? It was in 2007,</p> <p>21 I think. So either I saw it online or I</p> <p>22 had read it somewhere at that time I was</p> <p>23 supposed to be a witness in a research</p> <p>24 misconduct investigation.</p> <p>25 Q And were you a witness?</p>
Page 99	Page 101
<p>1 CONFIDENTIAL</p> <p>2 your office?</p> <p>3 A No. I never opened it. It's</p> <p>4 all online also.</p> <p>5 Q How was it made available to</p> <p>6 you, the book?</p> <p>7 A I don't know. It was lying in</p> <p>8 my office. I have no idea where it came</p> <p>9 from.</p> <p>10 Q Had you ever picked it up?</p> <p>11 A No. I think it might have been</p> <p>12 in my mailbox, and I might have picked it</p> <p>13 up from the mailbox.</p> <p>14 Q What do you understand this book</p> <p>15 to be?</p> <p>16 A This book is, to what I</p> <p>17 understand, the guiding principles of the</p> <p>18 institution, what are the expectations of</p> <p>19 the faculty and the institution,</p> <p>20 operational aspects of the institution.</p> <p>21 Q If you turn ahead to the page</p> <p>22 that's marked with the Bates stamp ending</p> <p>23 in 518, do you see the Columbia University</p> <p>24 Institutional Policy on Misconduct and</p> <p>25 Research --</p>	<p>1 CONFIDENTIAL</p> <p>2 A Yes, I was.</p> <p>3 Q Did you testify?</p> <p>4 A Yes.</p> <p>5 Q I guess I should have asked you</p> <p>6 that at the outset.</p> <p>7 How many times have you given</p> <p>8 testimony under oath?</p> <p>9 A Just that time and what is</p> <p>10 related to this issue. There was -- I</p> <p>11 don't know if it was a full testimony, but</p> <p>12 it was testimony for my part. I don't</p> <p>13 remember that there was a court</p> <p>14 stenographer or something. I might not</p> <p>15 have remembered it.</p> <p>16 Q In what --</p> <p>17 A But it was a formal</p> <p>18 investigation into research misconduct.</p> <p>19 Q So this was a proceeding such as</p> <p>20 Naomi Schrag's office conducts?</p> <p>21 A Yes, yes.</p> <p>22 Q And you provided information in</p> <p>23 connection with that proceeding?</p> <p>24 A Yes.</p> <p>25 Q At that time, did you read this</p>

26 (Pages 98 to 101)

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Page 102	Page 104
<p>1 CONFIDENTIAL</p> <p>2 policy?</p> <p>3 A Yes. I think I read this</p> <p>4 policy.</p> <p>5 Q And that was in 2007?</p> <p>6 A Yeah, 2007. I think it was a</p> <p>7 case involving Robert J. Frumento,</p> <p>8 falsification of data.</p> <p>9 Q Involving?</p> <p>10 A Robert J. Frumento and Elliott</p> <p>11 Bennett-Guerrero.</p> <p>12 Q Prior to 2007, had you ever read</p> <p>13 this policy?</p> <p>14 A I don't think so.</p> <p>15 Q Other than when you read it in</p> <p>16 connection with that matter in 2007, have</p> <p>17 you ever read it since then?</p> <p>18 A No. But we had a course,</p> <p>19 which -- we had a managerial course, which</p> <p>20 we have to take as part of Columbia</p> <p>21 faculty training, because there were some</p> <p>22 legal obligations for the university.</p> <p>23 And as a part of that, there was</p> <p>24 a slideshow in which -- not the research</p> <p>25 misconduct policy, but, overall, the</p>	<p>1 CONFIDENTIAL</p> <p>2 Did I read that correctly?</p> <p>3 A Yes.</p> <p>4 Q And have you ever seen that</p> <p>5 language before?</p> <p>6 A No. I saw it only after the</p> <p>7 lawsuit was filed.</p> <p>8 Q After this lawsuit was filed?</p> <p>9 A Yes.</p> <p>10 Q Okay.</p> <p>11 A Because I have operated on the</p> <p>12 website. I downloaded files from the</p> <p>13 website, which I sent to Columbia</p> <p>14 University investigators, and there's no</p> <p>15 disclaimer over there.</p> <p>16 Q There's not a disclaimer over</p> <p>17 there?</p> <p>18 A No. The printouts are</p> <p>19 available, and documents that you can see.</p> <p>20 Q There's not a link to that</p> <p>21 reservation right?</p> <p>22 A No, not if you download that</p> <p>23 research misconduct policy. You don't see</p> <p>24 that disclaimer anywhere.</p> <p>25 Q The book on your shelf, would</p>
Page 103	Page 105
<p>1 CONFIDENTIAL</p> <p>2 helpline and disclosure of concerning</p> <p>3 activities. You had to participate in</p> <p>4 that course every time.</p> <p>5 So part of the link on that,</p> <p>6 they said this is your connection and</p> <p>7 website, and that was also the other link</p> <p>8 at that time, probably.</p> <p>9 Q Do you know whether or not, at</p> <p>10 this time you joined Columbia in 1997,</p> <p>11 there was a policy on research misconduct?</p> <p>12 A I have no idea, and there was no</p> <p>13 need to look into it.</p> <p>14 Q If you go to the third page of</p> <p>15 the exhibit with the Bates stamp 290,</p> <p>16 there's language at the bottom of the page</p> <p>17 that says "Reservation of University</p> <p>18 Rights."</p> <p>19 Do you see that?</p> <p>20 A Yes, I see that.</p> <p>21 Q The last sentence of that</p> <p>22 reservation says, "The handbook is not</p> <p>23 intended to and should not be regarded as</p> <p>24 a contract between the university and any</p> <p>25 faculty member or other person."</p>	<p>1 CONFIDENTIAL</p> <p>2 you agree with me it has the same</p> <p>3 disclaimer language in it?</p> <p>4 A Yeah. It probably does, but I</p> <p>5 never looked at this. And we are also</p> <p>6 told that we operate at the highest</p> <p>7 ethical standards, you know, and we are</p> <p>8 supposed to follow the most idealistic way</p> <p>9 of functioning. So I have no reason to</p> <p>10 even think that such a disclaimer would</p> <p>11 exist with research misconduct.</p> <p>12 Q Well, it does, though, right?</p> <p>13 MR. JEREMIAS: Objection.</p> <p>14 A Well, not on the website.</p> <p>15 Q Not in what you looked at at the</p> <p>16 time?</p> <p>17 A Yes. And what did I operate it</p> <p>18 with? Because I sent those same printouts</p> <p>19 to Naomi Schrag. When there was a delay,</p> <p>20 the investigative delays, I sent a copy of</p> <p>21 the research misconduct policy, which I</p> <p>22 downloaded with highlights, questioning</p> <p>23 where are we in this? And you will not</p> <p>24 see any disclaimer in that.</p> <p>25 Q But the university made</p>

27 (Pages 102 to 105)



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<p>1 CONFIDENTIAL</p> <p>2 available to you a hard copy as well,</p> <p>3 which has the disclaimer fairly</p> <p>4 prominently on the second page?</p> <p>5 A Yeah. But I --</p> <p>6 MR. JEREMIAS: Objection.</p> <p>7 A I didn't read that.</p> <p>8 Q Do you agree that it's fairly</p> <p>9 prominent?</p> <p>10 MR. JEREMIAS: Objection.</p> <p>11 A I don't think so.</p> <p>12 Q Why not?</p> <p>13 A I never saw it. And I don't</p> <p>14 think in terms of the impact of research</p> <p>15 misconduct that this is very evident. If</p> <p>16 it was so important, it would be on the</p> <p>17 university website, which I downloaded.</p> <p>18 And it wasn't there on the</p> <p>19 university website that I downloaded,</p> <p>20 period. And you can see the printouts.</p> <p>21 My operational parameters were from the</p> <p>22 download of the university website.</p> <p>23 Q Do you have any doubt, looking</p> <p>24 at this today, that this reservation of</p> <p>25 rights applies to everything in this book?</p>	<p>1 CONFIDENTIAL</p> <p>2 you would agree with me that that</p> <p>3 reservation of rights was available to you</p> <p>4 in that way as well, right?</p> <p>5 A The printout of my research</p> <p>6 misconduct policy was made available to</p> <p>7 Columbia. If Columbia had any problems</p> <p>8 with that, they should have come back to</p> <p>9 me. They did not.</p> <p>10 Q If I could direct your attention</p> <p>11 to page 521 in the Bates number, which is</p> <p>12 also 229 in the upper right-hand corner,</p> <p>13 the page that begins "The Making of an</p> <p>14 Allegation."</p> <p>15 Do you have that in front of</p> <p>16 you?</p> <p>17 A Yeah.</p> <p>18 Q Paragraph 3 says, "In the event</p> <p>19 that the concerns of any individual are</p> <p>20 not resolved informally to the</p> <p>21 satisfaction of such individual, such</p> <p>22 individual may make a formal allegation of</p> <p>23 research misconduct (an allegation). Any</p> <p>24 allegation shall be made in writing and</p> <p>25 delivered to the chair of the standing</p>
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<p>1 CONFIDENTIAL</p> <p>2 A I have no idea of legal impact</p> <p>3 of that. These are the legal lawyers, and</p> <p>4 they deal with that.</p> <p>5 Q I'm not asking for a legal</p> <p>6 opinion.</p> <p>7 I'm asking for you, as someone</p> <p>8 who has this book on your shelf --</p> <p>9 A A book that --</p> <p>10 Q -- do you have any reasonable</p> <p>11 doubt that this particular reservation of</p> <p>12 rights applies to everything in this book?</p> <p>13 MR. JEREMIAS: Objection.</p> <p>14 A It's a book I have never read,</p> <p>15 and I have no opinion of it.</p> <p>16 Q The book was made available to</p> <p>17 you, and it was in your office when you</p> <p>18 joined the university, yes?</p> <p>19 A I did join it, but this was</p> <p>20 not -- at the same time, the Columbia</p> <p>21 website was also letting you download the</p> <p>22 policies, and that didn't have any waivers</p> <p>23 on it.</p> <p>24 Q And if you're incorrect about</p> <p>25 that, and the waiver was on the website,</p>	<p>1 CONFIDENTIAL</p> <p>2 committee or the EVPR."</p> <p>3 Did I read that correctly?</p> <p>4 A Yes. Let me go through which</p> <p>5 step it is. Yes.</p> <p>6 Q Did you make an allegation, as</p> <p>7 that term was defined in that paragraph,</p> <p>8 on April 3, 2015?</p> <p>9 A Yes.</p> <p>10 Q Had you ever made an allegation</p> <p>11 prior to April 3, 2015 with regard to</p> <p>12 Dr. [REDACTED]</p> <p>13 A No. The only thing was, this</p> <p>14 was a follow-up of the conversation that</p> <p>15 began in December of '14.</p> <p>16 Q And in that at that time, you</p> <p>17 were not able to resolve it formally to</p> <p>18 your satisfaction, the allegations, right?</p> <p>19 A They didn't come back to me,</p> <p>20 neither him or Chas Emala, so it was not</p> <p>21 to my satisfaction.</p> <p>22 Q They didn't come back to you at</p> <p>23 all?</p> <p>24 A They did not come back to me at</p> <p>25 all.</p>

28 (Pages 106 to 109)



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Q They didn't offer to meet with you?

A I sent multiple e-mails to Dr. [REDACTED] and Dr. Emala was Ccd.

Q And they didn't offer to meet with you?

A The only time we met was the first time.

Q My question was: Did they offer?

A No, not after this initial communication. That's it.

Q Their initial communication to you offered to meet with you, yes?

MR. JEREMIAS: Objection.

A I asked him. He said he wanted to meet. I wanted to have it in writing, because he has changed his opinions several times.

Q All right. We'll go through the e-mails in a second.

If you turn to page 522, under section G, the inquiry phase, number 1 -- do you have that front of you?

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A Yes.

Q The first sentence, which I'm not going to read because it's really long, basically says that the chair of the standing committee shall notify, among others, the complainant of the filing of the allegation.

Do you see that?

I'm paraphrasing.

A No. I just want to read it carefully. "In selecting preliminary reviewers" -- is that your line -- "the chair of the standing committee should" -- which line is it that you are asking me about?

Q The first line is talking about notice, a complainant is given notice by the chair of the standing committee, and you're the complainant with respect to Dr. [REDACTED] correct?

A Yeah.

Q Did the chair of the standing committee, in fact, give you notice?

A Yes. That was the letter that

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was sent to me in December of '15.

MR. SCHILLING: I'd ask the court reporter to mark this as Exhibit 7.

(Whereupon, E-mail, Dated December 29, 2015, was marked as Joshi Exhibit 7 for identification, as of this date.)

BY MR. SCHILLING:

Q Dr. Joshi, I'm handing you a document that's been marked as Exhibit 7, which was previously marked at Naomi Schrag's deposition as 34. It begins with a Bates stamp 2455, and it runs through 2459. And the top page is a December 29, 2015 e-mail.

Do you have that in front of you?

A Yeah.

Q Turning to the third page of this document, with the Bates stamp 2457 at the bottom of the right-hand corner, is this a letter that was sent to you on December 29, 2015 by David Strauss, the

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cochair of the committee on the conduct of research?

A I think so, yeah.

Q Did you receive this letter?

A Yes.

Q The next letter is a letter of the same date to Dr. Wood.

Do you see that?

A Yes.

Q Do you know whether or not Dr. Wood, prior to December 29, 2015, had noticed that you had filed a research misconduct complaint against Dr. [REDACTED]

A Do I know that? Dr. Emala is supposed to report to Dr. Wood. Dr. Emala did discuss matters with Dr. [REDACTED] Dr. [REDACTED] is very close to Dr. Wood. It would be impossible that Dr. Wood did not know about the lawsuit -- the complaint.

Q Do you have any personal knowledge as to whether or not Dr. Wood was aware that you had filed a research misconduct complaint in April of 2015, prior to December of 2015?

29 (Pages 110 to 113)

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A It is logical to assume that she knew about this matter very early on in the process.

Q I didn't ask you if it was logical to presume. I asked you if you had personal knowledge.

A Not at the time. But since then, I've seen e-mails that Dr. Wood was aware of what was happening.

Q Did you tell Dr. Wood that you had filed a research misconduct complaint against Dr. [REDACTED]

A No, I didn't. But I told it to Dr. Chas Emala, who was the vice chair for research and in the chain of command.

Q But you didn't tell Dr. Wood personally?

A No, I didn't, because Dr. Emala is the main guy.

Q Turning to the next page of the manual, with the Bates stamp at the bottom right-hand corner of 523, focusing on paragraph 5.

Do you have paragraph 5 in front

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of you?

A Uh-huh.

Q It talks about a draft written report defined as an inquiry report.

Do you see that?

A Yes.

Q Second sentence, the paragraph says, "The preliminary reviewers shall also provide the complainant with copies of those portions of the inquiry report relevant to the complainant."

Do you see that?

A Uh-huh.

Q Were you provided with portions of the draft inquiry report with respect to your complaints?

A I had received, I think, two letters. One was a preliminary letter, which said that an inquiry had been committed -- completed. And then a second letter, which followed a few days later, which had seven pages, and some of them seemed to be excerpts of the report.

MR. SCHILLING: Exhibits 8 and

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9.

(Whereupon, Letter, Dated December 5, 2016, was marked as Joshi Exhibit 8 for identification, as of this date.)

(Whereupon, Report, was marked as Joshi Exhibit 9 for identification, as of this date.)

BY MR. SCHILLING:

Q Dr. Joshi, I've placed in front of you, first, a document marked as Exhibit 8, which is a letter to you from Michael Klein, director of research compliance, dated September 6, 2015, and it was previously marked as Schrag 39.

Do you have that document in front of you?

A (No verbal response.)

Q Do you have that document in front of you?

A Yes.

Q The letter?

A Yes.

Q What is this document?

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A This document is informing me -- this is a September 5th document informing me that they have -- the inquiry phase is completed, and then if I have any comments, I need to comment about it.

Q Did you receive that letter?

A Yes.

Q What is Exhibit 9?

A Exhibit 9, I think this is a full report that came. I stand corrected. At some point, they send a preliminary report draft, and then they send a second report draft. And the second letter that I got, I got the report.

Q And Exhibit 9 is a draft inquiry committee report?

A Yes.

Q So do you believe this was not -- Exhibit 9 was not attached to Exhibit 8; you received that subsequent to Exhibit 8?

A It could be. There were two letters. I don't remember the time frame.

Q Okay.

30 (Pages 114 to 117)

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A In one, I got just the preliminary excerpts. And the other one, I got the full package. So whether it came in the same letter, I'm not sure.

Q So at some point, you received Exhibit 9 --

A Yeah.

Q -- from the Office of Research Compliance?

A Exactly.

Q Did you have an opportunity to review and comment on Exhibit 9?

A Yes.

Q Did you provide comments, in fact?

A Yes.

Q To your knowledge, is Exhibit 9 an excerpt or is it the complete --

A No, it's an excerpt.

Q There's more to this report?

A Definitely. Because it cites documents that are not here.

Q Turning your attention back to the policy, page 525, and it has a Bates

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stamp of 233, at the top section, it says "The Adjudication Phase"?

A Yes.

Q Above that, there's a paragraph 7.

Do you see that?

A Paragraph 7, yes.

Q It makes reference to promptly providing the complainant written notification of its decision, the standing committee's decision.

Do you see that?

A On 7?

Q Yes.

A "Standing committee may accept, reject or modify recommendations," is that what you are referring to?

Q Yes.

And it refers to, then, promptly providing the complainant and others with written notice of its decision?

A Yeah.

Q Do you see that?

A Yeah.

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Q Did you, in fact, receive notice of the decision from the standing committee in September of this year?

A Now, this is the inquiry phase. That is the investigative phase. Those are different documents. Those are different committees.

Q What was the document you received in September of this year?

A That is the investigative phase of the investigation. This was -- let me go back and check where we are, because -- so this is the investigative phase. Okay. You are right. This is pertaining to the investigative phase. Yes, I did get a document.

MR. SCHILLING: 10.

(Whereupon, Letter, Dated

September 6, 2019, was marked as Joshi Exhibit 10 for identification, as of this date.)

BY MR. SCHILLING:

Q Dr. Joshi, I'm handing you what's been marked as Exhibit 10, which is

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a letter to you, dated September 6, 2019.

Do you see that?

A Yes.

Q What is it?

A It is the final report that was sent to me by the standing committee.

Q Did you receive this in September of 2019?

A September of 2019, yes.

Q I take it from your complaint that you thought that the investigation proceeded too slowly; is that right?

A Yes, certainly.

Q Have you been harmed by the pace of the investigation of your complaint?

A Everybody is harmed with any delay of that kind, seriously.

Q Tell me about how you were harmed.

A Because your credibility of your allegations is gone, although this is a confidential process. It begins -- initially, the department knew that I had made complaints about [REDACTED], and it

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created a very hostile environment in some ways with the -- with me interacting with people.

I could feel it, because the neuroanesthesia team certainly knew about it. And I have spent many sleepless nights with these delays, because to me, the concept of raising genuine concerns, the errors in [REDACTED] paper are so gross and so outlandish. And the delays were, like, totally unimaginable.

I'll give you an example. Before I made a complaint to Dr. [REDACTED] I wrote my concerns to two editors of serious scientific journals. And within hours of that, hours of that, they said this is wrong, and one of them said send this to ORI. This was within minutes of sending e-mails. This was in December, I think, of 2014.

And then when Columbia was not proceeding with the investigation, I got a status station to review the data, and the status station gave me a report right

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away, that there are serious problems in this data set.

And Columbia itself, with its vast infrastructure -- I repeatedly told them I'm being hurt, and I'm under stress, and my nonclinical time is affected. I've been getting punitive assignments. I chose not to act.

They dragged it out, until in November, I could take it no more, and I reached out to ORI, and I gave ORI the timeline. And within minutes of that, virtually within days of that, Columbia launched a formal investigation.

Q That was in December of 2015?

A Yes.

Q How else have you been injured by the pace of the investigation?

A The last four years have been sheer hell for me.

Q Why?

A Because when you make an allegation against your mentor, who has powerful connections, who sits in every

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committee of the department, who has powerful political influence across departments, who has coauthored papers with the chair of neurosurgery -- which are now under question -- vice chair of neurosurgery -- which are now under question -- all senior vascular surgeons in the department, it's not a light thing to do. And you face that stress every night you go to sleep, every single night.

Q Is there any other way that you've been harmed by the pace of the investigation?

A Absolutely. This litigation -- my reputation has been destroyed.

Q By the pace of the investigation?

A By what was permitted during this time. For the last four years, this thing has not before resolved. It took four years for Columbia to resolve this matter, in which they did, and very controversially.

We have challenged this report.

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There are scientific issues with this report that has been given over here, serious scientific issues, which are totally inconsistent with the past retraction policies of the department -- of the university. Scientific issues. I'm not dealing with administrative issues. Columbia took one year, one year, to release this investigative report.

Where is that report?

This is the report they gave after one year of investigations. You would think this would be a very profoundly detailed, sophisticated report. Not one paper -- not one paper -- not one paper in this table, master CONSORT table, presents accurate data. Not one paper.

They found a paper in which [REDACTED] was given every opportunity to correct his data. His lawyers had intervened. The data didn't match the published results. They couldn't. And they refused to investigate it further. This is what the inquiry report was

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saying.

Imagine what stress you go through when you make an allegation, and you're faced with this sham investigation, totally, scientifically, a sham investigation.

Q Who conducted the sham investigation?

A The university.

Q Did they conduct a sham investigation in retaliation against you?

A No. I don't know what their purpose is. But definitely, the sham investigation hurt me.

Q Did it hurt you financially?

A Absolutely. This lawsuit, so far, has cost me half-a-million dollars. So far, half-a-million dollars, paid in cash.

Q Other than what you've incurred to your lawyers, have you been harmed financially by the pace of the investigation?

A Think of my reputation.

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Q I'm not asking about your reputation. I'm asking about financially.

Have you been injured financially as a result of the pace of the investigation?

A My promotion was delayed. The joint appointments were delayed. My research lab has been basically shut down. [REDACTED] had not been hurt because of this delay. Had this been resolved in the time frame before Margaret Wood and [REDACTED] retired, the situation would have been very different.

Q Why?

A Because we would be able -- the new chairman would not have been influenced by it. Not only have I been the damaged in the past, but I will continue to have damage forever in the future. Forever permanent damage. Permanent damage to my reputation. Permanent damage to my employment. Permanent damage to my division chief position. Permanent damage to my

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research.

Q With respect to your reputation, the process is confidential, is it not?

A The process is not confidential in the initial stages. And the e-mails that Dr. [REDACTED] sent out described me as this crazy guy, this troubled -- this problem. This guy -- slanderous e-mails; calling me a liar to other people, telling people that I would get rid of this institution if I had my chance.

And the guy's data doesn't add up. The guy's data simply doesn't add up. He is lying in every single paper, scientific paper.

Q And you're angry about that?

A No, I'm not angry. I'm passionate about it, because I feel it. Because I feel as a son of a scientist who had seen academic corruption in India, it deeply hurts me. It's not external anger. It's internal anger I have, that I feel.

I have seen what corrupt science means. My father was one of the founders

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of grain revolution in India, and he was known for his integrity in science. When he took over, there was famine in India. Famine in India. I have seen beggars in streets of New Delhi, begging at foreigners with tin cans.

And today, you see these plump Indians. Obesity is the problem. Why? Because there were scientists who produced data and grain. See the -- see the curve of how grain output in India has increased. And my father was one of the key players in that.

So I know what data means. I know was good science means. And that is what it hurts. It's not my anger. It's my passion.

Q You're not angry at [REDACTED]?  
MR. HYMAN: Objection.

A I'm not angry. I feel bad about it. It's a sad story, that somebody so senior has to do this to get a publication.

Q I take it you're not happy with

33 (Pages 126 to 129)

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the results of the investigation?

A I have my concerns. Look, it is what it is. We are given a set of cards to play with, and we will try to figure out what happened, where. That is how the reasoning works.

Q Now that the committee has come down with its decision that was conveyed to you, is it over?

A We have written to the Office of Research Integrity, who has oversight of these investigations.

Q So you're not willing to accept the outcome of the process?

A We have raised our concerns. It's up to the people and powers that be to deal with it. It's not our decision.

Q Who, outside of the university and outside of ORI, knows about your complaint against Dr. [REDACTED]?

A Nobody I know. It's just between ORI and the university that I know.

Q So when you're talking about

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your reputation, you're talking about your reputation within the university?

A No. But Dr. [REDACTED] has reached out to Bill Denair (phonetic) and other people.

Q To whom?

A Bill Denair (phonetic) and other people in his e-mails. He has reached out to Shafer and Pamela Flood in other universities to build a case of harassment against me.

Q Who else outside of the university knows about it?

A Those are the only people I know.

Q Did you ever talk to anybody outside the university about --

A No, not about this case.

Q Let me finish my sentence.

Other than counsel, who have you spoken to outside of the university about that fact that you filed a research misconduct complaint against Dr. [REDACTED]?

A I did not talk of a research

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misconduct complaint. Dr. Hartman, who is one of the people who reviewed [REDACTED] papers, was one of the people I said that promotion-related issues came up, so he was informed of the lawsuit going on. That's the only external thing I've done in terms of this thing.

I respect the confidentiality of the procedure. But at the same time, the confidentiality becomes a huge burden for a complainant also, when it drags out. And it hurts deeply and profoundly. You said that I am angry at [REDACTED].

I have not forgotten that --

Q I'm just asking --

A -- when my son was born, [REDACTED] gave me the playpen. And I will never forget that.

So while I'm angry about the science part of things, it is because I feel that this corruption should not happen. And if people think that I'm personally angry about it, and I'm personally angry about it, I feel more

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sad.

Because I saw these things happen when I was growing up as a child. I saw research corruption. People used to come to my house to verify that my father is not attending the meetings so bogus data could be pushed up. My father's life was threatened because he refused to falsify results. So that is what hurts me.

Please, don't get it wrong. Nobody spends half-a-million dollars' worth of savings. Because the system hurts you, and the corruption of the system hurts everybody. I'm sorry.

Q Don't be sorry.

MR. SCHILLING: Let's take a half an hour.

(Thereupon, a recess was taken, and then the proceedings continued as follows:)

MR. SCHILLING: 11.

(Whereupon, E-mail, Dated December 19, 2014, was marked as Joshi

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Exhibit 11 for identification, as of this date.)

BY MR. SCHILLING:

Q Dr. Joshi, I've placed in front of you a copy of the amended complaint in this action, which states at the top that it was filed in August 31, 2017.

Do you have that in front of you?

A Yes.

Q Have you ever seen this document before?

A Yes.

Q There was an original version of this complaint that was filed in June of 2017.

Did you read that version?

A I don't recall the specifics, but I did see it at the time.

Q Did you review both complaints before they were filed?

A Yeah. In general, I discussed it with my legal team and reviewed it with them.

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Q If I could direct your attention to page 9 of the document, which is -- and specifically to paragraph 32, under the heading "Dr. Joshi's Report of Research Misconduct."

A Yes.

Q The second sentence of paragraph 32 says that in December of 2014, based on your good faith concerns as to the reported data, you "approached the faculty member in order to explore and resolve the issues." It goes on.

Do you see that?

A Yes.

Q I'm showing you what's been marked as Exhibit 11, which appears to be an e-mail from you to Dr. [REDACTED] dated December 19, 2014, the subject, "Confirmation."

Do you have that in front of you?

A Yes.

Q Do you recognize this as an e-mail you sent to Dr. [REDACTED] on December

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19th?

A Yes.

Q Is this the approach referenced in paragraph 32 of the complaint, when it says that in December of 2014, you approached the faculty member?

A Probably. But it could be that I sent something to Chas and Ccd [REDACTED] at around the same time. But yes, this is the gist. This was the main answer I was seeking from him at that time. When you do your cognitive testing in somebody who has brain surgery, you cannot have a complete data set, because there are complications, period. And that is the answer I was seeking.

Q I don't mean to cut you off, but only because I want to make sure we keep the deposition moving so you don't have to come back a second day.

My only question is whether or not this e-mail was the approach referenced in the paragraph.

A Yes. One of the e-mails that

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was sent at that time.

Q Do you recall reaching out to -- when it says you approached the faculty member, did you approach Dr. [REDACTED] exclusively through e-mail?

A Yes. And I think on one occasion, we passed in the operating room. At that time, I asked him. I don't exactly remember what I asked him, but basically I was asking him have you responded to that e-mail, or something, that I sent to you?

Q What did he say to you?

A I don't think he answered it, or I don't recall if he said anything.

Q Other than that, did you have any conversations in person with Dr. [REDACTED] in December of 2014?

A I don't recollect. But specific to this, if it was verbal questioning of the data, I did ask him once.

Q When you passed him in the hallway?

A Yes. And it was -- I don't know

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whether he said I'll respond, or something like that, and that was it.

Q Paragraph 34 on the next page of the complaint, it says, "Thereafter, Dr. Joshi further sought to resolve" --

A Which --

Q I'm sorry. Paragraph 34, page 10.

A Yeah.

Q The very top of the page.

A Yeah.

Q That paragraph reads, "Thereafter, Dr. Joshi further sought to resolve the contradictions and discrepancies he had found through colleagues on the neuroanesthesia team, and then with the vice chair for department research, Dr. Charles Emala, all with no response and no correction or the resolution of the disputed data."

Did I read that correctly?

A Yes. And that is what I was telling you, that they didn't come back to me. The sequence of this is a little bit

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mixed up.

Q I only asked if I read it correctly.

A Yes, you did.

Q When he references in the second line of paragraph 34, "colleagues on the neuroanesthesiology team" --

A They're the senior members of the neuroanesthesia team, Gene Ornstein and Mitch Berman, who have been long-term participants, Chas Emala. So those were the people there.

Q So you spoke in --

A This was e-mail Ccd.

Q E-mail Ccd in or around --

A At that same time.

Q -- December --

A Because it was Christmas time, and it was -- not everybody is there in person.

Q Other than Gene Ornstein and Mitch Berman, anybody else you're referring to as "the colleagues" here?

A I don't recall right now, but it

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was all the senior people that were in the neuroanesthesiology group. I think that is probably the most I remember right now.

Q Why were you reaching out to the senior team in the neuroanesthesiology group?

A Because this was so obvious. He had just won an award. And I had asked him for clarification, and he was not resolving it. And then I found that what my concerns were were only growing over a period of time.

So I thought he will be able to answer it, and other people might see the same problem that I was seeing with the data. Because all of us are academic anesthesiologists, so I also wanted to get an opinion of what other people are feeling about this data, because it's so wrong.

Q Did anybody give you their opinion at this time?

A No. I think they were -- like, they weren't even concerned about it.

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They didn't seem to -- Gene Ornstein felt that there's nothing there.

Q So Gene Ornstein reviewed your concerns and found that there was nothing there?

A Yeah. He was -- I don't know how seriously he looked at it. Because I tabled everything, and it was all black and white. Or he was just rhetorically dismissing it. I didn't know of it. But from a scientific point of view, I don't think he took a serious insight into that at all.

Q And why did you raise it with him?

A Because he's also an academic anesthesiologist. He's a colleague that knows all of us, together. We worked together very closely. It means, this dispute aside, we are there together all the time in the operating room.

Q But you were going to him with your concerns about Dr. [REDACTED] research.

Were you concerned at all about

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 2 Dr. [REDACTED] reputation?  
 3 A No. These are issues -- at that  
 4 time, it was just a pure academic issue.  
 5 What is happening over here? What is the  
 6 deal? Can we resolve this? There was no  
 7 goal that this would escalate so far. It  
 8 was just like hey, have you read this  
 9 paper? This paper is funny.  
 10 Q But Dr. Ornstein didn't think it  
 11 was?  
 12 A No. He didn't take it  
 13 seriously. It means, I think he said he  
 14 was -- like, I don't remember what the  
 15 exact nature of his interaction was or his  
 16 comments were. So I said to him look.  
 17 Look at the data. What is he saying?  
 18 And it was more like when you  
 19 read a scientific paper. We shared it  
 20 amongst each other, and that was the level  
 21 of that. Nobody expected this to escalate  
 22 this far.  
 23 Q But it was you who escalated it,  
 24 right?  
 25 A No. Why would I do it if my

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 2 questions were answered? My questions  
 3 were never answered.  
 4 Q They're not answered to this  
 5 day, are they?  
 6 A Well, I don't say so. So some  
 7 of the things have been cleared. And some  
 8 of the things, we have understood. But we  
 9 haven't looked at the data set, and we  
 10 don't know what the truth is, the data in  
 11 its entirety. But we definitely know that  
 12 the data was overstated.  
 13 Q Dr. Ornstein gave you the advice  
 14 to move on, didn't he?  
 15 A Yes. He didn't feel that this  
 16 was significant at all.  
 17 Q And he --  
 18 A That was my impression. It  
 19 means, I'm paraphrasing.  
 20 Q And the end of paragraph 34,  
 21 after saying you raised this with Gene  
 22 Ornstein and Mitch Berman --  
 23 A And Dr. Emala.  
 24 Q -- and Dr. Emala, you write "all  
 25 with no response."

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1 CONFIDENTIAL  
 2 Do you see that?  
 3 A Yes.  
 4 Q Dr. Ornstein did respond to you,  
 5 didn't he?  
 6 A No, in regard to the scientific  
 7 concerns that I was raising. What I was  
 8 saying was I had raised scientific  
 9 concerns, and they did not respond in  
 10 terms of scientific concerns that I was  
 11 raising.  
 12 Q That's not what this says. It  
 13 says there was no response, as if they  
 14 didn't get back to you at all.  
 15 Am I reading that incorrectly?  
 16 A That was my interpretation of  
 17 it.  
 18 Q Okay.  
 19 Next paragraph, paragraph 35,  
 20 says, "Since Dr. Joshi had no response  
 21 either from the faculty member or the vice  
 22 chair of department research, Dr. Joshi  
 23 raised his serious concerns with  
 24 Columbia's office for research. And on  
 25 April 3, 2013, Dr. Joshi filed a formal

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 2 complaint."  
 3 Do you see that?  
 4 A Yes.  
 5 Q So this allegation is that  
 6 neither Dr. [REDACTED] the faculty member nor  
 7 Dr. Emala had responded to your concerns,  
 8 right?  
 9 A Yeah.  
 10 Q And that's not true, if by  
 11 "response," you mean "got back to you,"  
 12 right?  
 13 A Yes. In the scientific  
 14 questions I was asking -- in terms of the  
 15 scientific questions I was raising.  
 16 In fact, before this e-mail was  
 17 sent to the university, I sent out a  
 18 separate e-mail to Chas Emala and [REDACTED]  
 19 [REDACTED] saying look, if you don't want to  
 20 talk to me, talk to Chas Emala. And if  
 21 you don't do that, I'll raise it to the  
 22 university.  
 23 So I gave them both chances.  
 24 And when they did not respond to either of  
 25 my comments -- there was no response from

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these guys. I gave them another chance before I left it up to the university, in writing. So they didn't respond to that. And then only after I didn't get a response did I file it with the university.

MR. SCHILLING: 12 and 13.

(Whereupon, E-mail, Dated

December 20, 2014, was marked as Joshi Exhibit 12 for identification, as of this date.)

(Whereupon, E-mail Exchange,

Dated December 17, 2014, was marked as Joshi Exhibit 13 for identification, as of this date.)

BY MR. SCHILLING:

Q Dr. Joshi, I've placed in front of you what's been marked as Exhibit 12, which appears to be Dr. [REDACTED] reply to your e-mail of December 19th, 5:00 p.m. It appears to be replied at 1:34 in the morning on the 20th.

Do you have that in front of you?

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A Yeah.

Q Dr. [REDACTED] writes, "Happy to discuss with you, [REDACTED]"

Do you see that?

A Yeah.

Q Where was his office in relation to yours?

A Oh, very far away.

Q How far?

A We are in totally different buildings. He is six floors away from me, and we don't interact. No way we can interact, except in the operating room.

Q But the geography wasn't the reason why you didn't discuss it with him?

A No. I needed a written answer from him.

Q Why?

A Because in the past, he has denied saying statements that he made. And what I was asking was a very simple yes/no question. All the people communicated the data set. My thing was with data completion.

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See, whenever you undergo surgery, you have postoperative complications. You can never do complete cognitive testing. It's impossible to do that. And if somebody claims that I did cognitive testing in all of the 411 patients, there has to be a good reason for doing it.

And all I asked was did you do cognitive testing on day one on these patients? Which is impossible. Clinically, it is impossible. And he said let's -- happy to discuss. I said look, all I want is a yes/no answer. Did you do that?

And I wanted it in writing because in the past, he has denied what he has said. And that is why I didn't go for a discussion. And I gave him the option, if you don't want to discuss it with me, discuss it with Emala, and talk to me subsequently.

Q Well, he said he would discuss it with you; it's you who said you don't

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want to discuss it with him?

A No. I said give it in writing. Say yes or no. There's no discussion involved over here. It means, all I'm asking is a yes or no question.

Q And if you would have gotten a yes or no answer, that would have been sufficient for you?

A Yes. If he had given me yes, everybody was completed, then I know he's lying because it's impossible to do it.

Q So if it's impossible to do it, why were you asking him?

A Because I needed to know what he was saying in the paper. In the paper, he was saying, very clearly, all patients completed neurocognitive testing on day one. That is the statement in the paper.

Q And if he said yes, you were going to assume he was lying?

A Yeah. So I knew it was a serious then.

Q So what if he said it was no?

A Well, then we would have a

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discussion and see what it is, why he writing the statement, which is totally false.

Q It is true, is it not, that in response to your December 19th e-mail, Dr. [REDACTED] offered to discuss it with you; yes or no?

MR. JEREMIAS: Objection.

MR. SCHILLING: What is objectionable about that?

MR. JEREMIAS: The form.

MR. SCHILLING: In what way?

Can you read it back, please.

(Record read.)

MR. JEREMIAS: The objection stands.

You can answer the question.

A So my response was, knowing the background of [REDACTED] --

Q I asked you a yes or no question, Doctor.

Can you answer it yes or no?

A No. It's not a complete statement you're making. I'm willing to

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discuss it by e-mail, not verbally.

Q So you conditioned the discussion in the manner in which it would be discussed?

A Yes.

Q Okay.

A Because I didn't trust him in verbal response.

Q Turning to Exhibit 13, do you have that in front of you?

A Yes.

Q Is this a e-mail exchange between you and Dr. Emala?

A Yes.

Q On December 17th, yes?

A Yes.

Q In your e-mail at the bottom, you make reference to having been advised by a "senior faculty member" to let this go.

Who was that?

A This was Dr. John Pile-Spellman. He was a radiology chief who had done research with [REDACTED] and me, long-term. He

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knew both of us. So this was very early stages of this whole discussion.

And I was trying to figure out what is wrong over here. It means, the data looked so wrong to me, and the statement looked so outrageous. So I asked him, and basically the belief was that research fraud is rampant. You know, just give it up.

Q That's what he said?

A No. That's what the inference was over here. He just said let it go, because he --

Q What did he actually say to you?

A He basically responded saying look, let this go. That's it.

Q So he didn't comment on the merits of your allegation or not?

A No. Dr. Spellman and I have had long discussions about research integrity and science and things like that, and he was of the opinion that research fraud is very rampant in the universities.

Q Did he tell you that with

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respect to Dr. [REDACTED]

A No. He said let it go. He said don't work on it.

Q So with respect to your allegations with Dr. [REDACTED] Dr. Spellman didn't comment on the merits; he just said let it go?

A Yeah. I think we had a phone conversation about this.

Q I'm sorry if you said this already, but Dr. Spellman is with?

A He's at Northwell Park right now. He used to be at Columbia.

Q Okay.

In response to your e-mail of December 17th, Dr. Emala writes, "Let's meet to discuss."

Do you see that?

A Yeah.

Q Did you agree to discuss it with Dr. Emala at that time?

A Yes. I was -- I actually went out to discuss it. Initially, I said look, let's have a clear thing. What he's

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saying is -- I do not trust [REDACTED] personally, so I wanted him to intervene and figure out what the truth is.

Q But you wrote back to him, "There is nothing to discuss"?

A Yeah, because it's a black-and-white statement. It's not something that involves a decision. The statement was I did neurocognitive testing in all the patients, and I was challenging the validity of that statement.

It's a very straight question. It's like, is this day or night? The answer is yes or no. That's all I wanted. So that is why there is no discussion here. We have to establish whether a factual statement was true or not.

Q Well, Dr. Emala didn't think it was that straightforward, did he?

A I don't know. I don't know what happened. Because later on, when we went to Chas Emala, certainly Chas Emala's subsequent thing means he didn't even grasp what I was saying, the control group

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thing. I never raised control group things. His testimony from that time is totally confusing to me now.

Q Going back to the complaint, you said in the complaint that you filed with the court, you had no response -- in paragraphs 34 and 35, no response from the vice chair for the department of research, Dr. Emala.

That's not true, is it?

A Again, it was a conditional response. What I was expecting was a scientific discussion, and that didn't happen. The scientific questions -- I was focused on the scientific part of the thing, not a physical response, let's do this and let's do that. I was asking whether the statement made was accurate or not, and the scientific part of it. So that is -- it's that statement.

Q Would you agree with me that as written in the complaint, it's misleading?

A I wouldn't say "misleading."

Q Doesn't it --

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A I would say that from the scientific point of view, that was my understanding of it, and this is how I interpreted the statement. This is new to me, the way you're interpreting it. I still thought, in my terms, that I was raising a scientific query. The scientific query was never answered. That is the whole universe.

When you ask a simple question in science, did you do this, yes or no, that answer, I didn't get. And to that end, that was the basis of my statement. So I do not think I was misleading or misstating the facts. But my interpretation of the statement was based on scientific reasoning.

Q Neither of them ignored your questions; they both offered to meet with you, yes?

A And I did meet with them.

Q Right.

A I did meet with Dr. Emala.

Q When was that?

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A That was after whenever he said.

Q And before April 3, 2015?

A Yeah, yeah. It was around January. You know, end of December, January, I had a whole long meeting with them about the papers.

Q And what was the outcome of that meeting?

A He said he would discuss it and then never came back.

Q He never gave you his views one way or another?

A No, absolutely not. He never responded scientifically to any concerns I raised, neither did [REDACTED]. Other than this line, that I'd be happy to discuss, which had conditions, and I said let's do it in writing, there was no response when it came to scientific arguments.

Did I send them a lot of e-mails after that? Because as I read more papers, more concerns kept on coming. I sent them e-mails. Now, could they have

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sent back some e-mails saying this, that and the other? That's different. But the scientific issues were not addressed.

Q Is it a fair statement, Dr. Joshi, that you became obsessed with this issue?

A No.

MR. JEREMIAS: Objection.

A There are a lot of other things that are going on at the lab at the same time. A lot of other projects are going on at the same time. This is not an obsession thing completely. But I was certainly upset with the way people were not seeing the problem.

MR. SCHILLING: 14.

(Whereupon, E-mail Exchange, Dated December 19, 2014, was marked as Joshi Exhibit 14 for identification, as of this date.)

BY MR. SCHILLING:

Q Dr. Joshi, I've placed in front of you a document marked as Exhibit 14, the top of which is an e-mail from you to

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I consider this?

And then over a period of time, I was seeing more and more and more papers. What began with just a statement in a paper soon escalated to a pattern in several papers. So the situation kept on changing.

So, you see, you have to see it in the timeline of events. Like, when this thing was initially there, it was just hey, what happened here? Why did you do this? Is this statement true or false? And then you see more papers and more papers and more papers showing the same patterns. So the thing was changing.

Q But that's not what you write here. You wrote, "I'm obviously pissed at [REDACTED] for threatening my job, insulting me in 2007, and then lying." I asked you earlier if you were angry at Dr. [REDACTED]

This makes it seem like you're angry at Dr. [REDACTED] no?

A No. Look, "angry" is not the right word to use. I was concerned about

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Dr. Emala, December 19, 2014.

Do you have that in front of you?

A Yeah.

Q In the first sentence of your e-mail to Dr. Emala, you say, "Forget this. I'm obviously pissed with [REDACTED] for threatening my job, insulting me in 2007, and then lying about it, and so I see all of his actions in that light."

Do you see that?

A Yes.

Q What did you mean by that?

A So when [REDACTED] threatened my job and then retracted by saying "I never said these things," it had lowered my confidence in him. That is why I wanted him to give written answers. And my trust was gone.

And my wife was saying don't do this. Forget it. You know, this would be stressful to you. And I was going back and forth on it. And I was in this situation. Should I through this? Should

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his truthfulness.

Q You were pissed at him?

A Yeah. Like, look, the guy has lied to me before. Now I'm asking him a simple question -- yes or no, did he do it -- and he's being evasive.

Q He's not being evasive.

He offered to meet with you, and you didn't meet with him?

A Yeah, because I don't trust him. I wanted a written answer, and he had not given me that.

Q Isn't it true, Dr. Joshi, that what you wanted from him was some document you could then say uh-huh, I got you?

A In science, it's truth. It's not "got you." It's truth. If you are making up data, you have to have some consequences for that. You can't just report things, because it hurts the other guy behind you.

You may get away with it, but the other guy who is doing research in the same field is suffering. So you have to

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1 have some modicum of truth behind it. I'm  
2 sorry. It's -- I've come to realize truth  
3 doesn't matter.

4 Q So in December of 2014, were you  
5 angry with Dr. [REDACTED] or not?

6 A No. I was doubting his  
7 truthfulness.

8 Q You weren't pissed with him,  
9 even though you wrote in the e-mail --

10 A Yeah. There are always  
11 relations of "pissing." The word  
12 "pissing" is like -- everybody, kind of,  
13 says hey, I'm pissed off at this, you  
14 know.

15 But at that point, I was just  
16 seeing the data integrity. This is in the  
17 very early stages, when I have not even  
18 formed a definite opinion. I'm seeing  
19 statements that are blatantly false, and  
20 he is not giving me a yes or no answer to  
21 his statement that he has quoted.

22 Q He insulted you in 2007, and  
23 you're still pissed about it in 2014?

24 A What would you think if somebody

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1 tells you that your academic career is  
2 over, you have dug your grave, you are --  
3 go and see a shrink? You know, all these  
4 terms, they are hurtful terms.

5 And you can see my e-mails. I  
6 have never used disparaging remarks about  
7 him, except for being factually incorrect.

8 Q We have a lot of e-mails to go  
9 through, Dr. Joshi.

10 A All right. I've tried to be  
11 respectful, whenever it was possible.

12 Q Is that true in the e-mails  
13 you've written over the years with respect  
14 to Dr. [REDACTED] that you've been trying to  
15 be respectful?

16 A As much as I can.

17 Q Okay.

18 So where did we come out? In  
19 December of 2014, were you pissed with  
20 Dr. [REDACTED] or not?

21 A I was concerned about his  
22 research, big-time.

23 Q That wasn't my question.

24 A That's it. If you interpret

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1 that as -- that was my --

2 Q I'm just asking you about the  
3 words you use in the e-mail, Doctor.

4 A No. "Pissing" is a low-grade  
5 level of listening. I was certainly  
6 concerned. It's not that I was angry with  
7 him in physical ways, but I just wanted to  
8 get to the truth of the statement.

9 MR. SCHILLING: 15.

10 (Whereupon, E-mail, Dated

11 December 26, 2014, was marked as Joshi  
12 Exhibit 15 for identification, as of  
13 this date.)

14 BY MR. SCHILLING:

15 Q I'm showing you Exhibit 15.  
16 It's an e-mail from Dr. Emala to you,  
17 dated December 26, 2014.

18 Do you have that in front of  
19 you?

20 A Yeah.

21 Q He writes, "I think the issues  
22 you raised can cannot be addressed  
23 adequately in an e-mail exchange. I am  
24 available to meet next week to discuss."

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1 Do you see that?

2 A Yes.

3 Q So Dr. Emala did not agree with  
4 you that these issues could be resolved in  
5 an e-mail exchange alone, right?

6 A That was his interpretation of  
7 what I was saying. From my point of view,  
8 I wanted a straightforward starting  
9 question; is the statement made by you in  
10 this paper correct or not? In the  
11 totality of the papers together, yes,  
12 there is a lot of discussion; why you did  
13 it, what are the things.

14 Initially, I wanted a yes or no  
15 answer. That is what I was asking  
16 Dr. [REDACTED] With regard to Chas, when he  
17 said that I would meet you, I met him the  
18 very next time in a meeting. So we went  
19 ahead and met with him, and we discussed  
20 the papers.

21 Q How would you describe your  
22 relationship with Dr. Emala?

23 A I think it's a complex  
24 relationship. As you can see from my

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e-mails, I describe him that he has been my pillar of support, because I have always expected him to support me. And he has supported me over time, participated in research. He has come to my house. He has met my family. He even helped me buy the house when I bought the house. So I always trusted him.

At the same time, since that time, I've read e-mails in which he had been, frankly, hostile to me and very negative about me. So I can't -- that's why I said in the beginning that one of the -- look what happened to me, because of Chas Emala.

The new chairman comes in. I write to him a letter, in which I raised [REDACTED] concern. The next e-mail -- so the chairman forwards that e-mail to Dr. Emala with the words saying that as the wise chairman of research, tell me, what is the right thing to do?

And Emala writes back, I've heard all these things before, for many

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years. This guy has been uniformly negative. He's not getting up with that program. He needs to find what he has to do.

And at the same time, they're corresponding with each other, planning for the meeting for Dr. Brambrink, which is to follow subsequently. And then Dr. Brambrink concludes from all this discussion -- assuming that there were not other inputs to Dr. Brambrink -- that this guy is a highly disgruntled employee.

So I don't know how to take Chas anymore. And that is why when I said my trust in people has been shaken, that is the reason I am saying this.

Q Because the e-mails that he wrote to Dr. Brambrink, which you've seen as a result of this litigation --

A No. I --

Q -- questioned his support for you?

A No. I didn't expect it. I always thought he was a guy who was a true

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scientist, who had been trusted in research, who had been trusted in, you know, concerns that you raise. Scientifically, this guy is a good scientist. And when you have black-and-white statements which are incompatible, incompatible -- you know, he is then writing to Dr. Brambrink that, you know, this guy is very negative.

Q Do you think what he wrote to Dr. Brambrink was said in bad faith?

MR. HYMAN: Objection.

MR. JEREMIAS: Objection.

BY MR. SCHILLING:

Q You can still answer.

A Okay. So --

MR. SCHILLING: I'll state it differently.

Q When Dr. Emala communicated with Dr. Brambrink about you and your complaints, do you feel that he was lying about what he truly believed?

A No. I think what it is is that any scientific concern raised in the

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department is taken very negatively. Any scientific concern. Historically, any time you raise a scientific concern in the department --

And there are serious research misgivings in this department. This department does not have a stellar record of research, and people have been retaliated against for raising concerns. I'm not the only one.

Q I'm asking just about Dr. Emala at the moment.

A Yes, because Dr. Emala is the vice chair of research, and he did not take action. If I have a scientific concern and I raise it to Dr. Emala, it becomes Dr. Emala's responsibility to either convince me or follow it through or give me an explanation.

Q So do you leave open the possibility that Dr. Emala could have a difference of opinion with you?

A Yeah, certainly. But he should come and explain it to me.

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Q Did he?

A No, he didn't. Not after we had the meeting, never. And the explanation he has given in his two testimonials here, that my concerns were related to the control group, is not what I'm asking.

The questions we have read are related to 411 patients with complete data sets. It's a complete net of data sets. You just showed me the final report. And in that, the second part of the research misconduct thing, was [REDACTED] recklessly -- where is that report? Where is that report?

Read what the ad hoc committee found in the context of his grant application, that he was recklessly overstating the completeness of his data. That was my concern, and it should have been apparent to anybody who was looking at this paper that there is something really wrong in the way the data is presented.

And Dr. Emala never looked at

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those papers, because what he is saying is the control group. The control group became an issue only later on, when we realized that [REDACTED] control group was -- after these documents were found from New York State Psychiatric Institute, where we got access to internal information as to how Columbia conducted that investigation. The control group was not even at the same time as it was claiming to be contemporaneous. There were all sorts of problems in the data.

Q Do you think that Dr. Emala retaliated against you?

A Absolutely.

Q How?

A This is a statement he is making to the new chairman, who doesn't know me at all. That this guy is a troublemaker, sort of. You can read the gist of his e-mail that he sent to Dr. Brambrink after I raised concerns about Dr. [REDACTED] paper, and after Dr. Brambrink tells him "What is your opinion about this?"

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Q Who within the department of anesthesiology do you believe retaliated against you?

A I believe it was orchestrated by the department, the --

Q I want to get names.

A Names? Dr. [REDACTED], Dr. Chas Emala, Dr. Margaret Wood, Dr. Brambrink. Those are the people in the department.

Q Anybody else?

A These are the main characters. They have total control over me.

Q When you say "the main characters," I want to make sure I ask you about all of the people that you believe retaliated against you.

A No. I think these are the main people. Maybe somebody else did, you know. Like, I don't know. But these are the main people.

Q There's nobody --

A And as a result of that, I believe that also affected people in the neurosurgery department, because

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Dr. [REDACTED] coauthors were all from the department of neurosurgery.

Q You mentioned earlier that Dr. [REDACTED] had received an award for his papers?

A Yes.

Q What was that?

A That is why I got to know his research.

Q That's why what?

A That's how I got to read his papers. So Dr. [REDACTED] -- we have a departmental research award for clinical and basic sciences, and Dr. [REDACTED] had won the award. Until then, I had spectacular -- I may have disagreements about [REDACTED] about administrative issues, but when it came to research, I trusted his research.

Until that point in December, I had no reason to suspect his research. He had an exceptionally good, large group of people doing the research, and I was very positive about that research. And you can

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1 look it any way you want.

2 When I saw the paper, and I saw  
3 this claim that all 411 patients completed  
4 neurocognitive testing, it was then that  
5 the red flags went up.

6 Q What was the name of the award  
7 that Dr. [REDACTED] received?

8 A It's a clinical -- the  
9 department's annual clinical research  
10 award.

11 Q Have you ever received that  
12 award?

13 A I got the basic science award.

14 Q Did you ever receive  
15 the award --

16 A No. I got a clinical award  
17 years ago. 2005, I won it.

18 Q Did you receive the same award  
19 as Dr. [REDACTED]?

20 A Well, yes. It's the same award.  
21 But years ago, 2004 or something.

22 Q Do you like Dr. [REDACTED]  
23 personally?

24 A I have mixed feelings about it.  
25

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1 I actually see all of this as a bigger  
2 problem in research integrity, and I feel  
3 that people become victims of this culture  
4 of publications and pushing data to get  
5 publications.

6 Q What is ECT?

7 A ECT is electroconvulsive  
8 therapy.

9 Q What does that mean?

10 A Well, when people are severely  
11 depressed or they are, like, paralyzed  
12 with something called catatonia, they pass  
13 electric currents in the brain, and they  
14 shock them. And we give anesthesia so  
15 that the procedure can be safely done.

16 Q Do people refer to that as  
17 "shock treatment"?

18 A Yeah. It's electroconvulsive  
19 therapy.

20 Q And you have to get anesthesia  
21 for that?

22 A Yeah.

23 Q Are you trained to do that?

24 A I do that.  
25

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1 Q When did you first do ECTs at  
2 Columbia?

3 A At Columbia, we never -- I  
4 became a faculty, you know. When I was --  
5 I don't remember the exact date, but I had  
6 done ECT before. I didn't do ECT during  
7 my K08 years, as far as I recollect, but I  
8 did ECT after the K08 until 2013 -- 2012  
9 or 2013. Somewhere around that area.

10 And then I was insisting I  
11 shouldn't do ECT, because my lab and my  
12 research had become laboratory-related,  
13 not clinical. And when you do laboratory  
14 research, you cannot plan your  
15 experiments, because ECT was counted as a  
16 half-clinical day.

17 And you don't know how many  
18 patients show up on an ECT, so there is no  
19 advanced schedule, so you can't plan. You  
20 know, you go there, and there might be 15  
21 patients; or you go there, and there are  
22 three patients. But you can't say "I'm  
23 going to do a lab experiment tonight."  
24 And then one of the problems in  
25

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1 our department, which has been a bone of  
2 contention, is that we have two schedules.  
3 We have the clinical schedule for the day,  
4 and we have a call schedule after 4:00.  
5 And they are different schedules.

6 So the call schedule, when it  
7 kicks in -- so supposing you are doing ECT  
8 and it's been a long day, and you've had  
9 13 patients, and at 2:00, you finish, at  
10 4:00, you start your call. So that gives  
11 you no research time whatsoever.

12 Q During the time that you had the  
13 K08, you had 75 percent protected time?

14 A Yes.

15 Q So during that time, you didn't  
16 do ECTs, right?

17 A Yeah, as far as I recall.

18 Q So I just want to get the time  
19 period.

20 A Yes. It was until 2006.

21 Q Right. So the K08 ends in 2006.  
22 Do you remember that month?

23 A It was February. Approximately  
24 February.  
25

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Q So from approximately February of 2006 until 2012, you were in the rotation to do ECTs?

A Yes. And I was wanting to come out after my R01 grant got funded in 2008, but they were not acting on it. And then I got a second R01 in, I think, 2010, if I'm not mistaken, that I didn't do ECT.

And once I had that grant funded, I was off the ECT rotation on my request, because it's difficult to do research on that day.

Q So at the time that you got the second R01, you still had the first R01, yes?

A Yeah.

Q And so you had 60 percent protected time?

A Yes.

Q So at that point, when you had two R01 grants, you requested not to do ECTs, right?

A Right.

Q Who did you ask?

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A I think I raised it with [REDACTED] at that time, and it took some time for doing it, but then I was taken off the ECT rotation, I think, in 2011, 2012. I'm talking approximate time periods.

There was no correlation between grant starting and grant ending, but as a general correlation that we are establishing. Because I don't know the dates exactly when what happened.

Q So did it matter to your request to stop doing ECTs that you had gotten this second R01?

A Yeah. But the ECT load at that time was relatively light as compared to the load now. So the ECT workload had changed dramatically over the years.

So when I was away, previously ECT was a light day, and you would, kind of, do some work or something. But it was still a problem because of the unpredictable nature of the number of patients that were showing up for the procedure.

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Q Are you able to approximate how many times you've been assigned to ECT between 2006 and 2012?

A That would be difficult. The only quantitative data I have seen was that released by the department. There was a table that was produced of ECT from 2014, which is the pre-[REDACTED] period, to 2016, mid-2016. That is the only quantitative data I've seen, which is in one of our depositions.

Q During the period of 2006 to 2012, did you view it as part of your job responsibilities to do ECT?

A Look, if the chairman wants you to do it, you will do it. But usually all researchers were exempt. Particularly those doing lab research were exempt from doing ECT. So it wasn't that everybody did ECT.

ECT was a privilege, which clinical guys prefer to do it more because it's a slightly late start. And, you know, it's an unpredictable period. But

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the clinicals, they don't have commitment in the lab. So, like, Mitch Berman likes to do ECT.

Q Some people like to do it, and some people don't like to do it?

A Yes, because it's their nature of work. If I'm going to do lab research, it becomes a big burden on me. But if you're not lab research and you're just clinical, then it doesn't matter. When it finishes, you go and do other things. You have more flexibility.

Q Did you ever get feedback from anyone with respect to your skills or abilities in doing ECT?

A I -- they generally like what I do, but most people in neuro like what I do.

Q Who's the "they" in that?

A The ECT people. I've done ECT in other countries, you know, like Britain and other places. So I get along well with those people, so it's not a big deal.

Q Physically, do you do ECTs at

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the New York Psychiatric Institute?

A Yes. And also in another hospital. There are two venues in which we do it.

Q I saw from the e-mails that there was an issue with respect to whether or not you had to get your privileges reinstated.

A Yeah.

Q Could you tell me how that works?

A So it was very strange. Most researchers who are doing lab research, and those that are NIH funded, were given the option of not doing ECT, because there are other clinical faculty who generally prefer doing ECT.

Q I'm just asking about the mechanics of it.

A No. I'm telling you the whole thing. So what happened after that, suddenly I was told that I've got to do ECT. This is soon after I filed the complaint about [REDACTED].

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And I reminded him that I don't have privileges, you know, because you have to get it in another institute to do it. And I was already put on schedule, without even having my privileges. Getting privileges takes, sometimes, months, because the committee meets at only certain points in time. And I was put on ECT rotation, knowing full well I didn't have privileges.

And I found that very awkward, because there were other people, like Mitch Berman, who wanted to do ECT, like John Gaudet, [REDACTED] all of whom had done ECT and were available. Tom Yocum was another guy. And I was being picked out to do ECT, despite the fact that I was doing laboratory research and other people were available to do it.

Q And you believe that was retaliatory because you filed a complaint of research misconduct?

A Absolutely, because I was the only one who was put on that rotation.

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There were other people who could have done it.

Q When did your NYSPI privileges lapse?

A I don't know. Somewhere around '12, '13. Whenever they took me off the schedule. I didn't renew it, and they didn't ask for it to be renewed.

Q And how long did it take to get them reinstated?

A I think I got it in the month of May, if I'm not mistaken. We started immediately in February or March, when this ECT thing came up. So I was on March group. I was told in February that I have to do it. The paperwork started in early March. I think in the May meeting, I was approved for it. Something like that.

Q We'll look at the schedules in a minute, but you're scheduled for a day of ECT in April?

A Yeah. That's what I'm saying. I didn't have privileges at that time to do it. Dr. Berman did it for me on that

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occasion.

Q So even though you're on the schedule in April, you didn't actually handle ECTs?

A I couldn't do it, because I didn't have the legal basis for doing it.

Q Right.

My question was: Yes or no, you did or did not do ECTs in April of --

A I could not have done it. It's not that I --

Q That would be a no?

A That would be a conditional no.

MR. SCHILLING: 16.

(Whereupon, E-mail Exchange, Dated February 28, 2015, was marked as Joshi Exhibit 16 for identification, as of this date.)

BY MR. SCHILLING:

Q Dr. Joshi, I've placed in front you a document marked as Exhibit 16, a one-page e-mail exchange. The bottom is between Mitch Berman and [REDACTED], and the top is between [REDACTED] and John

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Mercer.

Do you have that in front of you?

A Uh-huh.

Q Other than in the course of this litigation, have you ever seen this e-mail before?

A I don't recall.

Q The bottom e-mail is dated February 28, 2015, from --

A No. I don't think it was Ccd to me.

Q No, it doesn't appear to be. The bottom e-mail is dated February 28, 2015, and you're referenced in that e-mail. It's from Mitch. It says "I'm neuro 2, Weller is 1, Joshi is 3."

What does that mean?

A Who is referring to -- the e-mail I see is from [REDACTED] to Mercer.

Q I'm looking at the bottom e-mail.

A The bottom e-mail is from Zirka, subject, Mitchell Berman and [REDACTED].

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Q Right.

The "subject" is Zirka?

A Yeah.

Q The "from" is Mitch Berman?

A Yeah.

Q The "to" is [REDACTED]?

A Yeah.

Q I'm just asking if you can tell me what the 2, 1 and 3 mean in that?

A So the neuro schedule -- in the previous years, although it's no longer applicable, we used to be neuro 1, neuro 2, neuro 3. Neuro 3 would do neuro X-ray and vascular room. Neuros 1 and 2 would do the lead rooms. So if the schedule became light, neuro 1 would stay on, and neuro 1 was the person who goes on call. So the call person would continue working.

So we had built an infrastructure so that, you know, there was continuity of patient care. And those are neuro 1, neuro 2 and neuro 3 that he's referring to. Those are the postings

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within the neuro department. In addition to that, you had neuro ECT.

Q And if you're neuro 3, does that mean you're less likely to be called for work, or how does that work?

A No, no. It's a different assignment. It's an assignment in neuro X-ray, and it's considered light because you get two rooms, neuro X-ray and the vascular surgery room. The vascular surgery always has cases, but the neuro X-ray may be light. It's just assignment issues.

Q Were you aware in or about February of 2015 that Zirka Anastasian was pregnant?

A I did not deal directly with them, and I did not know much about the personal histories. So even if it was, it was not something that I knew at that time.

Q Dr. Anastasian, was she in the rotation of the ECTs at the time?

A I'm sure she did, because --

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Q And did there come a point in time in 2015 when she dropped out of the rotation for ECTs?

A Yeah, because apparently she got sick at some point in time. I didn't know that at that point in time.

Q And you see in the bottom e-mail, you're being discussed as someone who can sub in for Zirka; is that right?

A Uh-huh.

Q Yes?

A Yes.

Q In the top e-mail from Dr. [REDACTED] it says, "Only Zirka, John, Mitch, Gene and I are up to date on our Psychiatric Institute privileges."

Do you see that?

A Yes.

Q Who's John?

A John was John Gaudet.

Q Mitch is Mitch Berman?

A Mitch is Mitch Berman. Gene is Gene Ornstein. Zirka is there.

Q And so Dr. [REDACTED] solution at

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1 this point is not to go to you, but to go  
2 to Mitch, because you don't have  
3 privileges, right?

4 A "If I could get someone to cover  
5 for Mitch in the a.m., he could do ECT. I  
6 am thinking I should ask Joshi to  
7 reactivate his PI privileges."

8 So I don't know what his things  
9 are and which Monday he is referring to,  
10 but that is what it is on the paper.

11 Q He continues and says, "I will  
12 need him when Zirka goes out on maternity  
13 leave."

14 Do you see that?

15 A Yeah.

16 Q So was it your understanding  
17 that in February of 2015, there's a  
18 discussion about needing you for ECT  
19 because Zirka was going out on maternity  
20 leave?

21 A I don't know. This is what is  
22 in this e-mail.

23 Q Do you have any reason to doubt  
24 that is true?  
25

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1 A No. I don't know why I'm being  
2 picked out of it. It means, there were  
3 other people on the team. He had  
4 privileges. [REDACTED] had privileges and  
5 nonclinical time, and he was not funded.

6 Q He's the division chief, right?

7 A So what? He is able to pick up  
8 the slack and not post me when I don't  
9 have privileges in an institute where he  
10 knows it takes time to get privileges.

11 Q Well, how much time did it take?

12 A It took two months, but he had  
13 made assignments even before asking me or  
14 getting privileges.

15 Q Did he make the assignment or  
16 did Dr. Wood?

17 A So Dr. Wood gives the overall  
18 assignment. [REDACTED], as he's saying over  
19 here, is putting people in ECT. It is  
20 [REDACTED] decision who he puts within the  
21 schedule. It's not, what's the decision  
22 on day to day running of the schedule?

23 The monthly schedule is  
24 determined by Dr. Wood. The daily  
25

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1 schedule is one of the responsibilities of  
2 the division chief.

3 Q As of February 28, 2015, you had  
4 not filed an allegation of research  
5 misconduct, had you?

6 A No. It was in -- but I had  
7 complained about his research papers.

8 MR. SCHILLING: 17.

9 (Whereupon, E-mail Exchange,  
10 Dated March 5, 2017, was marked as  
11 Joshi Exhibit 17 for identification,  
12 as of this date.)

13 BY MR. SCHILLING:

14 Q Dr. Joshi, I placed a document  
15 in front of you marked as Exhibit 17,  
16 which is another e-mail exchange or set of  
17 exchanges that you were not on, but this  
18 was also from -- this is March 5, 2015.

19 Do you have that in front of  
20 you?

21 A Yes.

22 Q The bottom e-mail refers to  
23 Marsha.

24 Who is Marsha?  
25

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1 A Marsha is the one who makes the  
2 daily schedule officially. After [REDACTED]  
3 assigns the rooms, the formal schedule is  
4 put out by Marsha.

5 Q And at the bottom e-mail,  
6 Dr. [REDACTED] is asking Dr. Wood do you want  
7 me to ask him, i.e. you, to reactivate  
8 privileges if they've expired.

9 Do you see that?

10 A Yes.

11 Q And Dr. Wood replies at the top,  
12 "Yes, please. I needed extra help that  
13 day, as you can see."

14 Do you see that?

15 A Yes.

16 Q Would you agree with me that as  
17 of March 5, 2015, the decision had been  
18 made to ask you to reinstate your  
19 privileges so that you could do ECT?

20 A I'm trying to check the date on  
21 the above e-mail. I don't see a date in  
22 the above e-mails, right?

23 Q Okay.

24 A There's an e-mail below, which  
25

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is March 5th. But the top e-mail, I don't know when that came.

Q So as of March 5th, Dr. [REDACTED] is requesting or is asking Dr. Wood whether or not you should be assigned to -- I'm sorry.

As of March 5th, Dr. [REDACTED] is asking Dr. Wood whether or not you should have your privileges reinstated because you had been assigned by that point already to ECT in April; is that right?

A I think what is missing over here is that there was a conversation that Dr. [REDACTED] was -- had with me, I think, before all these e-mails started.

MR. SCHILLING: Can you read my question back, please.

(Record read.)

A Yes.

MR. SCHILLING: 18.

(Whereupon, E-mail, Dated March 5, 2015, was marked as Joshi Exhibit 18 for identification, as of this date.)

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A Yeah. Not formal complaint, yes.

Q Thank you.

So as of March 5, 2014, you still didn't have your privileges?

A No.

Q But you got them thereafter, yes?

A I didn't have privileges.

Q But you got them thereafter?

A Yes.

Q But not by April 3rd?

A No.

Q You didn't do ECT on April 3rd?

A Yeah.

Q When was the next time you did ECT?

A I think, as I recollect, it was in May that I started, once I got the privileges.

Q Around this time, March of 2015, when you got that e-mail from Dr. [REDACTED] did you actually have a conversation with him in person about being assigned to ECT

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BY MR. SCHILLING:

Q I'm placing in front of you a document marked Exhibit 18, which is a one-page e-mail from Dr. [REDACTED] to you, dated March 5, 2015.

Do you have that in front of you?

A Yes.

Q It says, "Joshi, could you reactivate your PI privileges if they have lapsed? You will be assigned to ECT on April 3rd."

Do you see that?

A Yes.

Q You had not yet filed your research misconduct formal complaint as of March 5th, correct?

A Yes. But I had challenged [REDACTED] data in the department. This is '15, right, March? December, I had raised concerns about [REDACTED] --

Q I didn't ask you that. I asked you whether or not you had filed your formal complaint by that point.

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and having to get your privileges reinstated?

A Yes. I think when he -- before that e-mail track started, he met me at the end of the corridor. Our offices, as I told you, are very separate, and we interact only in the corridors or in the operating room. And he said I will need you for ECT.

Q When was that?

A I think around just -- I think just prior to getting these e-mails.

Q And what did you say to him?

A I said most researchers don't do ECT. Why are you putting me in ECT? And I don't recollect much more than that.

Q Did he give you an explanation?

A I think he was pretty set that I had to do ECT.

Q Do you remember anything else that he said in that conversation?

A No. It was a very brief conversation in passing. That's all I remember.

50 (Pages 194 to 197)

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Q Did you ever speak to Dr. Wood about being assigned to ECT at this point?

A No. Dr. Wood and I don't meet. We are in totally different areas of the hospital. Dr. Wood doesn't come to the operating room. I don't go to her office. My lab is totally separate. Me running into Wood is not a possibility, even.

Q Well, putting aside whether or not you had just run into her casually, did you ever seek her out and try to meet with her your being assigned to ECT in this time period?

A No. We had all these e-mails going on, back and forth.

Q Did you ever pick up the phone and call her?

A No. I don't call her for this. I don't call the chairman for this all the time. It's not -- I don't have the luxury of talking to her on a free basis.

Q Why not?

A It's just not done. I have never done it. I don't feel comfortable

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talking that way. In e-mail, it's documented. We know what we are doing.

Q Did you not trust Dr. Wood?

A I can't give an absolute black-and-white statement. There are certain things, you trust her; and there are certain things, you don't.

Q How do you distinguish?

A In research matters, I don't trust her.

Q Why not?

A Because she has supported bogus research all the time, fraudulent research. She even supported research that led to death of patients in studies. She has tried to cover those up and protect those -- not cover up, but protect those people. So in research matters, I don't trust her.

In administrative matters, yes. In personal matters, yes, I would trust her. If Wood says something about some personal matter, illness in the family and things like that, why not?

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Q Well, in this that we're talking about, being assigned to ECT is not a research matter, is it?

A It's an administrative matter.

Q So why wouldn't you pick up the phone and call her and talk to her about it?

A Because it's all on the e-mail. It happened very quickly. We are in different locations.

Q You were being upset about being assigned to ECTs, were you not?

A Yeah. But it's all there, in the e-mails. This is in a very brief time period that we are talking about.

Q How significant was it to you that you were being assigned to ECTs in this time period?

A It was an extra burden on me, definitely. It means that the days I'm ECT, I can, basically, not do research or plan research for that day.

Q When you say "or plan research," what does that mean?

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A Look, when we do animal experiments or cell culture experiments or tumors have to be implanted in animals or surgery has to be done, it has to be planned beforehand. But when you don't know what time is available to you, those surgeries cannot be done. Those experiments cannot be done. Those are time-sensitive experiments.

Q Has there ever been a time where you were both conducting lab research and in the ECT rotation prior to 2015?

A Let me try to focus on that period. Yes, I was doing it, but those experiments were slightly different than the experiments we are doing now. Because previously, the experiments were done in healthy animals, so you had a little bit more flexibility.

Because now we do human-implanted experiments, so the experiments have changed over time. And the nature of surgery has been much more sophisticated than what it was when I used

51 (Pages 198 to 201)

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to do it previously with simple, healthy animals.

Q Is it your view that being assigned to ECT and doing research is mutually exclusive?

A It's very difficult.

Q How?

A Basically, it's a write out on that day. You can't do research on that day.

Q So the impact is measured in the number of days you get assigned to ECT?

A Yes. And especially because you start call at 4:00, which is not accounted in these assessments that you are seeing. And that is why none of the researchers -- for instance, Tom Yocum is a researcher in neuroanesthesia. Maya Mikami is a researcher in neuroanesthesia. They hardly get -- Tom Yocum has never done ECT research at all. At all. Never.

Q You didn't do ECT research when you had a K08, right?

A Yes. But at the same time, Tom

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was not K08.

Q Was he T32?

A I don't know what he was.

Q If he was T32, wouldn't he have protected research time, about 75 percent, like you when you had your K08?

A I have no idea what his funding levels are. In terms --

Q Then why are you using him as a comparison? Isn't it relevant whether or not he has restricted time in terms of comparing --

A No. But on the basis --

Q -- you and him?

MR. JEREMIAS: Objection.

A On the basis of NIH funding records that are available that I can see, I did not see it.

And also, [REDACTED], who has had no funding at all, was not doing any additional ECT, when he could have stepped in. And he told it in his testimony, that he could have stepped in. That was his statement. But he chose not to.

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Q And as the division chief, he has the right to do that, right?

A Everybody has the right to do whatever you want to do, but it has to be for a reason, and it has to be fair. If it's detrimental to some researcher who is funded, you have to give that into consideration.

Q You have to under what?

A Give it under conversation.

Q Is there some written rule about when a person can be assigned to ECT in the department?

A No. There's not a written rule. But there is a general understanding that if you do laboratory research, you are protected.

Q Would you agree with me that if Dr. Yocum had a T32 commitment of 75 percent, he would not be a proper person to compare yourself to in terms of ECT?

A No. But it's not an absolute rule, even there. Maya Mikami is also

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exempt largely, doing ECT sometimes. So it's not that it's a black-and-white rule. It's just interpretation of what one takes.

Q But you didn't do ECT during the period that you had 75 percent protected time under your K08, right?

A I don't recall doing that, yes.

Q Did Dr. [REDACTED] teach residents every day during this period?

A Yes, sometimes. They had a rotation. Sometimes they would come in the morning and teach. It's not that every day he was present, but he would have a teaching day there. I don't remember what his teaching schedule was.

Q You didn't know what his teaching schedule was?

A Not in detail. I know generally, he was present on some days.

Q So you didn't know whether or not Dr. Yocum had protected research time under T32, and you didn't know what Dr. [REDACTED] teaching schedule at the time

52 (Pages 202 to 205)

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1 was either, right?

2 A I had no way of doing it. No, I  
3 knew that -- let me correct myself. I  
4 knew [REDACTED] taught on some days. But  
5 how much teaching he did, net, I did not  
6 know the totality of it. I never kept  
7 count of it.

8 Q You could pick up the phone and  
9 ask him?

10 A The need never arose.

11 Q Well --

12 A Because that is a very small  
13 period of the day, when you do that.

14 Q Am I correct that you did not do  
15 ECTs in May 2015?

16 A I have no recollection.  
17 Whenever I got the privileges renewed, I  
18 started it after that.

19 Q Does that sound -- you did one  
20 day in July of 2015.

21 Does that sound right to you?

22 A It could be, because July is a  
23 one-on-one teaching month, so it's a  
24 different month.

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1 Q How many days in a month being  
2 assigned to ECT would interfere with your  
3 research?

4 A At that time, when it was very  
5 critical for writing grants and  
6 applications, every day mattered.

7 Q Every day matters.  
8 So every day you're assigned to  
9 ECT --

10 A At that particular time, because  
11 we're trying to get grants out, and we're  
12 trying to work. And at that time, ECT was  
13 considered half a day. ECT is no longer  
14 considered half a day. It has become a  
15 full-clinical day. So things have  
16 changed.

17 Q When did it become a full day?

18 A When -- I think after  
19 Dr. Brambrink came. Exactly when, I do  
20 not know.

21 MR. SCHILLING: 19.

22 (Whereupon, Handwritten

23 Analysis, was marked as Joshi

24 Exhibit 19 for identification, as of

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1 this date.)

2 BY MR. SCHILLING:

3 Q Here you go, Doctor.

4 Dr. Joshi, I've placed a  
5 document in front of you marked as  
6 Exhibit 19. It has the Bates number P248  
7 to 251. This was produced by your side.

8 Do you recognize this document?

9 A It seems to be some analysis of  
10 data I've done; total days, PC minus  
11 vacation days, ECT, meeting days.  
12 Something like that.

13 Q The format seems to change on  
14 the second page, so let's start there for  
15 simplicity.

16 Going across the top of the  
17 second page, could you tell me what the  
18 initials mean?

19 A I think this is "total days,"  
20 "post-call days," "vacation days."

21 Q I'm sorry; could you go slower,  
22 and tell me which initials you're  
23 referring to?

24 A I think it's total days in the  
25

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1 month.

2 Q Is "TD"?

3 A TD.

4 Q What is "PC"?

5 A Post-call.

6 Q What is "VCA"?

7 A VCA is probably vacation days.

8 Q What's the next one?

9 A Post-call versus -- plus  
10 vacation days, you know, adding the two  
11 together. Then ECT assignment days, and  
12 then clinical days, and total clinical  
13 days, because ECT was half a day. So you  
14 divide that by two, and add it to the  
15 clinical days.

16 Q And then NC plus, what is that?

17 A That's NC plus meeting days  
18 plus --

19 Q Is that ECT?

20 A Yeah, ECT. So it's some sort of  
21 a calculation. I can't recollect right  
22 now.

23 Q What's the final column?

24 A Total NC days, total nonclinical  
25

53 (Pages 206 to 209)



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<p>1 CONFIDENTIAL</p> <p>2 days. So it's clinical and nonclinical</p> <p>3 days.</p> <p>4 Q And total nonclinical --</p> <p>5 A So they should add up to 22.</p> <p>6 Total clinical and total nonclinical</p> <p>7 should add up to 22.</p> <p>8 Q Why?</p> <p>9 A Because that's the number of</p> <p>10 days. You know, this is the calculation</p> <p>11 based on ECT, which is half-day, and then</p> <p>12 total clinical days, and then you take</p> <p>13 away vacation days and post-call days. So</p> <p>14 the net should be 22.</p> <p>15 Q Could you take me down the left</p> <p>16 side with the initials, and tell me</p> <p>17 which -- who is "ZA"?</p> <p>18 A Zirka, Mitchell Berman, John</p> <p>19 Gaudet, [REDACTED], S. Joshi, Tom Yocum.</p> <p>20 Q And for the month of March 2015,</p> <p>21 who has the most total nonclinical?</p> <p>22 A Month total nonclinical has</p> <p>23 Joshi.</p> <p>24 Q And who has the least total</p> <p>25 nonclinical in March 2015?</p>	<p>1 CONFIDENTIAL</p> <p>2 that time, as far as I recall. Zirka</p> <p>3 wasn't funded. Mitchell Berman was not</p> <p>4 funded. John Gaudet was not funded. Tom</p> <p>5 Yocum, as you say, was T32. But he's the</p> <p>6 only guy who would have some support. So</p> <p>7 I'm the only --</p> <p>8 Q I was asking if Tom Yocum --</p> <p>9 A No. I just want to clarify that</p> <p>10 you are mixing different categories of</p> <p>11 people in this same group.</p> <p>12 Q Well, you put these people on</p> <p>13 this list.</p> <p>14 Why did you put these people on</p> <p>15 this list?</p> <p>16 A Because it was a list of</p> <p>17 neuroanesthesia people who were doing it.</p> <p>18 And Ornstein is not here, because he's</p> <p>19 half in and out, so it's difficult to</p> <p>20 judge his schedule.</p> <p>21 Q Is anybody else on the neuro</p> <p>22 team not included on the schedule?</p> <p>23 A No. These are the main people</p> <p>24 that do neuro.</p> <p>25 Q On June of 2015, which is the</p>
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<p>1 CONFIDENTIAL</p> <p>2 A Zirka.</p> <p>3 Q And going to April 2015, you'll</p> <p>4 see for you, under ECT, it says 1, but we</p> <p>5 have established you didn't do ECT in</p> <p>6 April 2015, right?</p> <p>7 A Yeah. This is based on the</p> <p>8 schedule.</p> <p>9 Q I see.</p> <p>10 So what should your total</p> <p>11 nonclinical be for April of 2015?</p> <p>12 A It would be -- I don't know</p> <p>13 whether I exchanged it to somebody for</p> <p>14 that day. You know, I could have asked</p> <p>15 Mitch Berman to do it instead of me.</p> <p>16 Q But you don't recall?</p> <p>17 A I don't recall, so I can't</p> <p>18 comment on it right now.</p> <p>19 Q Based on your chart, who had the</p> <p>20 least amount of nonclinical time in April</p> <p>21 of 2015?</p> <p>22 A Zirka, obviously. She's</p> <p>23 clinical. She doesn't have any funding or</p> <p>24 research obligations. These are different</p> <p>25 people. [REDACTED] was also not funded at</p>	<p>1 CONFIDENTIAL</p> <p>2 next page, you have no ECT; is that right?</p> <p>3 A Yeah, according to this</p> <p>4 schedule.</p> <p>5 Q And what is your total</p> <p>6 nonclinical?</p> <p>7 A 16.</p> <p>8 Q You have the most nonclinical --</p> <p>9 A Yes.</p> <p>10 Q -- of the group for June 2015,</p> <p>11 right?</p> <p>12 A Yes. But I'm the only funded</p> <p>13 guy. I'm the only funded guy of all these</p> <p>14 people. So 30 percent of my nonclinical</p> <p>15 is for my grants. None of these guys have</p> <p>16 any funding except -- you know, I don't</p> <p>17 know about Tom Yocum. Let's keep that</p> <p>18 aside for a minute.</p> <p>19 Q When we talk about nonclinical,</p> <p>20 it's not a same thing as research time,</p> <p>21 right? You could be doing other things</p> <p>22 with your nonclinical time, such as</p> <p>23 administrative work, right?</p> <p>24 A When you're in the lab, you need</p> <p>25 to do lab work. And in between that, you</p>

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try to do administrative work, if possible.

Q Well, Dr. [REDACTED] is a researcher, right?

A Yeah. He's a clinical researcher.

Q And he has administrative responsibilities?

A Right.

Q So when he has nonclinical time, he can either do research or administrative work?

A No. Dr. [REDACTED] research is basically patient-related. He can do research any day of the week in the operating room. So he is totally not put in the same vein of work of research as I am.

Q So he is not a proper comparator to you?

A No.

MR. JEREMIAS: Objection.

A No. A proper comparator in the sense that he has additional benefits of

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doing clinical research. So he can do research during his clinical days, whereas I can't.

Q Would you agree with me, for the month of June, which is about two months after you filed your complaint of research misconduct, you had the highest number of nonclinical time of this group?

A Yeah. Based on this analysis, yes.

Q This is your analysis, yes?

A It is my analysis, but it is based on certain changes that might have happened after the schedules were made. But yes.

Q Paragraph 44 of your complaint says, "Over this time, Dr. Joshi was regularly allotted the least amount of departmental supported research time in the department."

Is that true?

A Yes. If you take away the 30 percent time in these calculations and we did those calculations -- so subtract

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one-and-a-half clinical days a week, which came from the grant, then you're left with the departmental support. And that was the least. None of these people are funded.

Q As far as you know?

A Well, Zirka isn't funded. We know that. There's nothing in the NIH reporter that you can see. Even Tom Yocum doesn't show up on the NIH reporter.

Q Because you looked?

A What?

Q Because you looked?

A I looked at it. But the thing is, now you're telling me T32 is funding him. That's a separate issue.

Q I'm asking. I'm not making any representations.

A No. But I'm telling you, based on NIH reporter funding -- that Dr. Chas Emala had stated is the way to determine grant funding support -- none of these people had funding support at that time.

Q Then why did you do this

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analysis?

A To find out what it is. It means, I'm the only funded guy from the department. And I have 30 percent of my research time, and my research time is being cut, compared to before I made the complaint to what I made afterward.

And Dr. Emala has said in his testimony that he believed that there was a reduction of nonclinical time, but he thought my grant funding status had changed. My grant funding status did not change after 2013 to March 30, 2017. There was no change. I had 30 percent support.

And Dr. Taylor made a similar statement, that it could be that my funding level had changed. What was changing was that the department got the score after I made the complaint.

Q Who did that?

A It's between Margaret Wood and [REDACTED]

Q You don't know?

55 (Pages 214 to 217)

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A It has to be Margaret Wood, because she makes the principal decisions, and [REDACTED] implements them. Or it could be both of them.

Q July 2015, you have one day of ECT; is that right?

A Yeah. If it is true, it is what it is standing.

Q Do you know when you got your privileged reinstated?

A I think it was May-something, late May-something that it's dated. And the schedules take some time to come through.

Q August, you have one day of ECT. Do you see that?

A Yeah.

Q Is the one day of ECT in July and the one ECT in August, two days over two months, impairing your research?

A In the month of July, we have additional clinical responsibilities also.

Q Are you able to answer the question I posed?

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A Yes. I think it was affecting my research.

Q How much?

A To the extent that it was decreasing. Those days were becoming difficult for me to do research, and then it was going to escalate.

In November, for instance, you can see what happened. I'm on vacation. I'm called back from vacation to do ECT. And there are other people who could have done ECT on that day, which was between Thanksgiving and the weekend.

Q Who?

A John Gaudet was on clinical that day on the schedule. He could have easily done ECT, but didn't approve my vacation and asked me to come down and do ECT.

Q Well, you were approved for 15 days of vacation, right?

A That was what they finally approved. But they had actually rejected the vacation and taken away some days and brought me in to do ECT.

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Q You did three whole days of ECT in November?

A Yeah. But I worked five days. It was a 20-day week -- 20-day month.

Q If you weren't on ECT in November of 2015, you would have been on vacation?

A I would have been on vacation. But the thing is that the assignment -- what I'm telling you is I was assigned to ECT, when I could have been given a day off. And what I was doing on the vacation was working on a book.

Q So the three days of ECT that you were assigned in November of 2015 didn't impact your research because you would have been on vacation during that period of time?

A No, but we did. We did lose the research time. It's all eating into research time. And when you cut the nonclinical time support and you add ECT, it becomes a double hit.

MR. SCHILLING: 20.

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(Whereupon, Analysis of Nonclinical Time and ECT Duties of Full-Time Neuroanesthesiology Faculty, December 2014-November 2015, was marked as Joshi Exhibit 20 for identification, as of this date.)

MR. JEREMIAS: Can we take a quick break.

(Thereupon, a recess was taken, and then the proceedings continued as follows:)

MR. JEREMIAS: I just wanted to note that there were some questions that made reference to a T32 grant and the amount of nonclinical effort associated with that. I don't think there was ever a foundation to establish that that was, in fact, correct and whether or not that is true. But the questions did have assumptions made about the clinical effort, so I just wanted to note that on the record.

MR. SCHILLING: Is that an

56 (Pages 218 to 221)

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objection to the form on the lack of foundation?

MR. JEREMIAS: Correct.

MR. SCHILLING: Okay.

BY MR. SCHILLING:

Q Dr. Joshi, before we get to this document, which I hesitate to take you through, am I correct that after the date you filed your formal complaint of research misconduct in April 2015, you have submitted four NIH R01 grant proposals?

A Two of them are repeat submissions, so it's the same proposal submitted with a backup. I believe one is a resubmission of the same grant, yes.

Q I place in front of you a document that was produced by your side, marked as Exhibit 20, Bates stamps P570 through P584.

Do you recognize that document?

A Yes.

Q What is it?

A This was an analysis I had done

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of the nonclinical time.

Q When did you do this?

A I don't know. The last date of whatever is -- the time period that is referred to.

Q The time period on the first page says December 4, 2014 --

A Yes.

Q -- to November of 2015.

A Yes.

Q So did you prepare this in December of 2015?

A It could be, yes.

Q What was the purpose for which you prepared this document?

A Because I was seeing that my nonclinical time was being cut, and I wanted to see what happened before. There was a significant change, like not just ECT assignments, but also the departmental support and nonclinical time had been reduced. So I was doing an analysis on them.

Q For what purpose?

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A To find out whether I am being targeted, whether my facts are correct or not.

Q Did you give this document to anyone other than counsel?

A I think I gave it only to counsel.

Q Did you prepare this for purposes of giving it to counsel?

A No. This is for my counsel, not for your counsel.

MR. SCHILLING: This is not privileged, is it?

MR. JEREMIAS: Off the record.

(Discussion held off the record)

BY MR. SCHILLING:

Q So other than counsel, you have not shared this document with anybody else?

A No, no. This was made only for my counsel. If it's here, it's here.

It's got good and bad things.

Q What's bad?

A Because it was based on printed

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schedules that you showed me, you know, that data. Because this was what the department assigned me to, and there may be days when I, you know, didn't have privileges and somebody stepped up for me, or somebody went sick, and then I traded another day for them. So there could be, you know, some subtle errors in it.

Q So if the schedules that you're basing this on were not what actually occurred for that particular month, then the analysis in here would be off?

A No, not by much. Not by much. These are internal exchanges we do. For instance, I can't do ECT for some reason or I go out sick or I have a doctor's appointment, somebody comes and steps up for me.

So the schedule may not be the same day. It could be traded for a day next month or this month. But in the big picture, it should be accurate. This is the assignment that the department made for us.

57 (Pages 222 to 225)

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1 CONFIDENTIAL  
 2 Q I see.  
 3 A You understand?  
 4 Q Yes.  
 5 A And then somebody goes off sick,  
 6 somebody's child is sick, so you may  
 7 exchange days and move them around. But  
 8 in the big picture, it should be okay.  
 9 Q Got it.  
 10 Why did you present it in the  
 11 format in which you've presented it?  
 12 It looks like a presentation  
 13 deck to someone else.  
 14 A No, no. I generally do --  
 15 because it's just clarity of thought when  
 16 you're thinking.  
 17 Q On the second page of the  
 18 document under "Key Events," it looks like  
 19 you're defining some of the lines and  
 20 demarcations on the next page; is that  
 21 right?  
 22 A Yeah.  
 23 Q The first bullet says "Month 1:  
 24 Representative research time before  
 25 [REDACTED] publications, solid black line,

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1 CONFIDENTIAL  
 2 were questioned."  
 3 A Yeah. Those are the nonclinical  
 4 research times. That is both the  
 5 grant-supported research time and the  
 6 departmental research time combined.  
 7 Q What's representative about it?  
 8 A This is where the average line  
 9 was in the previous months prior to the  
 10 complaint.  
 11 Q Prior to the complaint, and the  
 12 complaint was in April of 2000 --  
 13 A No, no. The complaint to the  
 14 department was in January -- December.  
 15 That is before I raised the concerns. I  
 16 complained about [REDACTED] research, or  
 17 raised concerns about [REDACTED]  
 18 research, in December of '14.  
 19 Q Got it.  
 20 A And the schedules have a  
 21 gestation period. They don't come out  
 22 exactly the same month. They come out one  
 23 month in advance, sort of.  
 24 Q Got it.  
 25 Turning to the next page, the

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1 CONFIDENTIAL  
 2 second line at the top says "Total  
 3 Research Time, Including NIH Effort."  
 4 Do you see that?  
 5 MR. JEREMIAS: Are we on 572 or  
 6 573?  
 7 MR. SCHILLING: 572, second  
 8 line, "Total Research Time, Including  
 9 NIH Effort."  
 10 BY MR. SCHILLING:  
 11 Q In the time period, the 1  
 12 through 12 below, am I right that the 1 is  
 13 December of 2014?  
 14 A It could be January.  
 15 Q Well, which is it?  
 16 A I think it's January, if I'm not  
 17 mistaken. I may have -- no, I said it  
 18 before, right? It's still November, so I  
 19 put that thing in front when I sent it.  
 20 It ends in November of '15, if I'm not  
 21 misrecollecting. So it begins from  
 22 December of the previous month to November  
 23 of the next month.  
 24 Q It threw me off for hours when I  
 25 was first reading it.

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1 CONFIDENTIAL  
 2 A Yeah. You know, like, on the  
 3 cover?  
 4 Q It's right there on the cover.  
 5 You're totally right.  
 6 A It's right on the cover page.  
 7 Q Your NIH effort in the time  
 8 period was 30 percent?  
 9 A Yes.  
 10 Q And so in the far right, month  
 11 12, which is November of 2014, you're at  
 12 30 percent?  
 13 A '15, November '15.  
 14 Q Correct.  
 15 A Yes, not '14.  
 16 Q Did I say "2014"?  
 17 A Yes.  
 18 Q I'm sorry.  
 19 November of 2015, the far right  
 20 column here, that red dot, that's you at  
 21 30 percent effort?  
 22 A Yeah.  
 23 Q The dot representing you on this  
 24 page never goes below 30 percent, right?  
 25 A That is true, and that was why I

58 (Pages 226 to 229)

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was fighting for nonclinical time for ECT, because those days that we added ECT are taken as half-nonclinical days.

Q And the E1 and E2, E1 is December 2014?

A Yeah. I think those are the landmarks when I first challenged the data and when I filed the complaint, and I don't know what E3 is. It's probably stated somewhere. "Harassment increased significantly," E3. So things changed significantly in the ninth month, so that would be August, September of 2015.

Q It changed how?

A Because the time was being degraded. I was getting more ECT. As you just noted, I was less ECT before. And it was increasing over time, and ECT was really hurting my research. And that is what was happening in E3.

So E1 is when I first complained about [REDACTED] data. E2 is when I filed the official report, and E3 is when I felt that I was being hurt more

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significantly. It was more significant retaliation.

Q E3 corresponds to when you complained to whom?

A I may have complained, E3, to Columbia University, Naomi Schrag, because I kept them at breast.

One of the things I told them at the very outset, the Columbia people, is that I'm in a very difficult situation because [REDACTED] is my immediate boss, and my chairman has a history of retaliation.

And the term I used to explain that was "it would be death by 1,000 cuts," that every administrative rule will be used against me in the most subtle way. And it's very difficult to prove where harassment begins and ends.

And I begged them to look after me and to protect me, because it would be an insidious kind of harassment, not an overt abuse. And this is well documented in e-mails contemporaneously, which you

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can review.

Q So E3 represents a time when you raised issues of retaliation with Naomi Schrag?

A Yes.

Q Do you believe that Naomi Schrag had any impact on your assignment to clinical or nonclinical?

A Naomi Schrag does have an obligation to protect me if I raise my concerns.

Q That wasn't my question.

My question was: Do you think she had any role in your assignment of clinical versus nonclinical time?

A No, not directly.

Q Indirectly?

A Yes. She can ask Dr. Wood and find out why it's happening. She is, after all, vice president of research, responsible for implementation of non-retaliatory policies. And if I tell her there's harassment, she's obligated to, at least, question me about what is

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happening. They never questioned anything. They never came back to say, after December '15, "What is the nature of the retaliation?"

Q Did you never speak to Naomi Schrag about these issues?

A I wrote several e-mails. And when I met her for the first time, I openly discussed it. I said this is what is being done to me.

Q So you addressed this issue, and you spoke --

A But she never responded to the subsequent e-mails that I sent regarding schedules and timings and ECT assignments. She never called me back to say what is happening here?

It was only in December '15 that we met, when the formal inquiry was made, that I had a chance to talk to her. But I did send her several e-mails regarding harassment.

Q November 2015, I think we have established you were on vacation, yes?

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1 CONFIDENTIAL  
 2 A Yes.  
 3 Q If you turn --  
 4 A The other thing I would like to  
 5 caution over here --  
 6 Q I just asked a yes or no  
 7 question. I want to keep it moving.  
 8 A Okay.  
 9 Q I want to get you out of here so  
 10 you don't have to come back.  
 11 A Definitely.  
 12 MR. JEREMIAS: Unless he wants  
 13 to clarify something.  
 14 Q Unless you need to clarify  
 15 something you said that was incorrect,  
 16 which you're welcome to do at any time.  
 17 A If you want to get me out of  
 18 here, that's good news. Let's do it.  
 19 Q If you could turn to page 576,  
 20 we have -- it's slightly easier to read  
 21 because there's only two people on here.  
 22 This compares you and Dr. Yocum,  
 23 yes?  
 24 A Yes.  
 25 Q Why did you choose Dr. Yocum to

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1 CONFIDENTIAL  
 2 compare yourself to?  
 3 A Because at that time, he didn't  
 4 have any NIH funding, and he was a lab  
 5 researcher.  
 6 Q And you write "support  
 7 declining" under you?  
 8 A Yes. It's says "Departmental  
 9 support declining."  
 10 Q And when it declines in November  
 11 of 2012 down to zero, that's because  
 12 you're on vacation, right?  
 13 A Yeah. But you're conflating two  
 14 issues over here. You are saying that if  
 15 people take vacation, they're not entitled  
 16 to vacation. Let's keep vacation  
 17 separate. Let's see the work hours that  
 18 we are assigned to, and then see how those  
 19 work hours are distributed. Don't  
 20 conflate vacation time with work  
 21 assignments. They are two different  
 22 issues.  
 23 It means, this same reason was  
 24 offered by Patricia Capatano, saying that  
 25 had he not been on vacation, this would

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 2 have happened. Why is vacation time taken  
 3 a factor in research time? This is  
 4 obligatory vacation time. You get to do  
 5 whatever you want to do.  
 6 Q Dr. Joshi, if you weren't on  
 7 vacation in November, you would have had  
 8 assigned to you nonclinical days in  
 9 November of 2015, right?  
 10 A Yeah. But it has to be in  
 11 proportion of the total clinical days that  
 12 are to be assigned.  
 13 Q But you're not doing the  
 14 proportion here because you weren't  
 15 getting any nonclinical time?  
 16 A So let me understand this  
 17 clearly. What you are saying is, there's  
 18 a fixed number of clinical days that you  
 19 have to do irrespective of what you take  
 20 in vacation; is that what you're telling  
 21 me?  
 22 Q No.  
 23 What I'm saying is, you're  
 24 basing this off the schedules. And one  
 25 thing that's different in the schedule for

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1 CONFIDENTIAL  
 2 November 2015, which is number 12 here,  
 3 which you have as zero, the very dramatic  
 4 decline, it's not comparable to the first  
 5 11 months, because you're not getting  
 6 assigned any nonclinical time in November,  
 7 because you took vacation for the entire  
 8 month.  
 9 A You have totally misread the  
 10 whole thing.  
 11 Q Tell me about it.  
 12 A This is the percentage of  
 13 nonclinical time over total work hours or  
 14 total assignments. So it doesn't matter  
 15 whether you're on vacation or not, because  
 16 your total amount of work commitment is --  
 17 this is a fraction of that work  
 18 commitment.  
 19 Q I'm going to be one of the  
 20 people who are not persuaded, Dr. Joshi.  
 21 A No, no. Let me try and say this  
 22 again. What I'm saying over here is that  
 23 what you are seeing over here are  
 24 percentage figures based on the clinical  
 25 work assignment, right, and your research

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<p>1 CONFIDENTIAL</p> <p>2 work assignment, the total universe of the</p> <p>3 workdays you have, whether they are</p> <p>4 clinical or nonclinical. Vacation days</p> <p>5 are sitting on one side. They are totally</p> <p>6 different. They are not to be factored in</p> <p>7 this equation. They are taken out in</p> <p>8 these things.</p> <p>9 Q They're not taken out of your</p> <p>10 chart?</p> <p>11 A They are. This is the</p> <p>12 percentage of clinical time assignment.</p> <p>13 Q If you had not taken vacation --</p> <p>14 I'll leave this issue in a second.</p> <p>15 If you had not taken vacation,</p> <p>16 if you had not been on vacation for the</p> <p>17 entire month of November, you would have</p> <p>18 been assigned nonclinical time and,</p> <p>19 therefore, that number would have been</p> <p>20 zero, correct?</p> <p>21 A Yeah, but --</p> <p>22 Q But?</p> <p>23 A No.</p> <p>24 Q No?</p> <p>25 A Your understanding is wrong.</p>	<p>1 CONFIDENTIAL</p> <p>2 Q Based on the schedule?</p> <p>3 A Based on the schedule and --</p> <p>4 yeah, as I've told you. And assuming that</p> <p>5 ECT is half-clinical day and half-research</p> <p>6 day.</p> <p>7 Q So in July, which was month 8,</p> <p>8 because it's always off by one, you had</p> <p>9 the least ECT as compared to Anastasian,</p> <p>10 Berman and --</p> <p>11 A Yeah. Those are clinical</p> <p>12 people. Those are not research people.</p> <p>13 Q So they're not comparable to</p> <p>14 you?</p> <p>15 A No, they are not.</p> <p>16 Q Why are you comparing yourself</p> <p>17 to them?</p> <p>18 A Because I'm comparable to the</p> <p>19 clinical people eventually when you do the</p> <p>20 analysis. It means I'm not being treated</p> <p>21 like a researcher anymore.</p> <p>22 Q Got it.</p> <p>23 A I'm sorry.</p> <p>24 Q Is anybody who's in this</p> <p>25 comparable to you?</p>
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<p>1 CONFIDENTIAL</p> <p>2 Let me correct you.</p> <p>3 Q Okay.</p> <p>4 A When you get nonclinical time</p> <p>5 assignment, it is the total amount of --</p> <p>6 percentage of the total amount of work you</p> <p>7 do. The vacation time is totally</p> <p>8 different.</p> <p>9 So if in a month, I take 10 days</p> <p>10 vacation, those are not to be factored in.</p> <p>11 What is to be factored in is of the</p> <p>12 remaining 10 days when I was working, what</p> <p>13 was my assignment like? How much of it</p> <p>14 was my research time and how much of it</p> <p>15 was my clinical time?</p> <p>16 Am I clear now a little bit?</p> <p>17 Q We'll go to the next page, 577.</p> <p>18 I understand the analysis,</p> <p>19 Dr. Joshi.</p> <p>20 A Okay. Thank you.</p> <p>21 Q I don't agree with your</p> <p>22 analysis, but I understand what you're</p> <p>23 saying.</p> <p>24 This is ECT assignments?</p> <p>25 A Yes.</p>	<p>1 CONFIDENTIAL</p> <p>2 A You just threw a curveball at me</p> <p>3 by saying Tom Yocum is T32.</p> <p>4 Q No. I don't know. I'm asking.</p> <p>5 A What I understand from T32, T32</p> <p>6 doesn't apply to any faculty members. T32</p> <p>7 is a training grant for fellows. That</p> <p>8 question shouldn't even arise when you</p> <p>9 were questioning about T32. It's a</p> <p>10 training grant for fellows, not for</p> <p>11 faculty.</p> <p>12 Q Okay.</p> <p>13 A Look, I don't know all of the</p> <p>14 details of T32, because I don't deal with</p> <p>15 it. But it's not -- to bring up that</p> <p>16 issue with relation to faculty is not</p> <p>17 accurate.</p> <p>18 Q But during the course of when</p> <p>19 you're doing an analysis like this, and</p> <p>20 you're doing -- you're thinking, which</p> <p>21 you've done a lot of, about whether or not</p> <p>22 you're going to bring a lawsuit about this</p> <p>23 and accuse people of certain things, you</p> <p>24 didn't ask Dr. Yocum what his research</p> <p>25 commitments were, right? You just went to</p>

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public sources and just found what you found, and then you did an analysis?

You're a scientist; is that okay?

A No. Guess what Chas Emala said? He said the way to look at grant funding and research is to go the E-Reporter, which has documented funding for every PI.

Is there private funding? Yes.

That's a limitation. Private funding doesn't show up. Does private funding count the same way as NIH funding? No, it doesn't, because it doesn't pay the indirect costs in most conditions.

So most of the universities focus only on NIH, R01 grant, and what is in the reported in the E-Reporter.

Q You make a good point.

A Thank you.

Q This does not -- your analysis here doesn't take into account whether or not they have funding other than NIH funding; this is exclusively --

A No, no. And you know what? I'll tell you what. T32, I don't think is

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the right question, right issue. Tom Yocum and others did get a private grant, a small private grant, which is for young faculty who come on board. It is a small grant which is given. But that was not there at the time of these concerns. So if you factor all those in, I think my analysis is valid.

MR. HYMAN: Off the record.  
(Discussion held off the record)

BY MR. SCHILLING:

Q Who is Mark Weller?

A Mark Weller is the chief of Allen. He also serves neuro team, sometimes, off and on.

Q Who is Joe Rumley?

A Joe Rumley is also one of those guys who does ICU and travels around the world and sometimes does clinical and sometimes -- but he's not a researcher.

Q Is neuro their main area?

A No. They are hybrid, that's why they are separate. They do neuro and Allen, which is a different hospital, and

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Rumley does ICU and vascular and general also. Sometimes he works in neuro, not all the time.

Q Are they comparable to you in terms of comparisons for ECT purposes?

A Rumley was doing ECT when he was there, but he has other commitments. And Mark Weller is also -- I don't think has ever done ECT, but he was on the neuro team.

Q So he hadn't done ECT?

A No. He hadn't done ECT.

Q So when you have to find somebody to sub in for Zirka, you're not going to choose him, right?

A No, not him. But I think, also, Rumley was traveling all the time. I don't know what his status was.

Q Promotion, want to talk promotion?

A Whatever you say.

MR. JEREMIAS: Is that a question?

Q How many times have you applied

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for a promotion at Columbia?

A That's something based on recollection. In 2006ish, I was approached by the chairman for a possible promotion.

Q Chairman Wood?

A Wood. And I put in my CV tentatively, and she was -- it took several months. And it was in the backdrop that she was shutting my lab down and doing things to me, and we had a big conflict about time -- research time allocation under the K08 grant.

So at the time, she had raised the issue of promotion. And then it wasn't going anywhere because she was criticizing my data, and people were threatening my job at the same time, when [REDACTED] were there. And that was one time.

Q And you withdrew your request for promotion at that time?

A I do not know whether we followed up at that time. I think I put

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it there and something happened. I vaguely recollect that. Whether it was 2007 or 2008, the matter escalated and went to Anne Taylor. I do remember that. And it was becoming painful for me to follow it up, because she was not enthusiastic about it.

So at that time, I had written to Anne Taylor saying that under these circumstances -- I was very careful about my wording. I said I have to stand down for some reason. You have to read those wordings very carefully. But the implication was that the atmosphere is too toxic for me to proceed with the promotion process.

Q So you withdrew from the promotion process?

A I did, again, a conditional withdrawal. But I asked Dr. Anne Taylor to -- I was hoping that Dr. Anne Taylor would follow it up and say well, what is the problem? And she never did.

My expectation was when any

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faculty says that it's not a good environment to push through promotion, the people in the Dean's office would say why? What are you doing? What is the problem? They never followed through.

Q To your knowledge?

A To my knowledge, yes, obviously.

Q And --

A No. I may be -- you know, if that is the time that I think it is.

Q And you say that Dr. Wood threatened to close your lab?

A Dr. Wood threatened to close my lab, relocate my lab on several occasions.

Q To close or relocate?

A I wouldn't -- I have a very small lab, so I would hesitate to use the word "close" that I used. I think she was relocating the lab, and she was going to shut -- they were threatening my job, basically. So implied in that, they were keen to shut down my lab.

Q They were threatening -- who was threatening your job?

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A [REDACTED]. But fortunately, I got funding from Boston University, and I braced for that period, and then I got my R01.

Q Is [REDACTED] in a position to fire you?

A Exactly. He's not in a position to fire me, and that was one of the questions I asked Dr. Wood when we met her in 2008, when the promotion issue came up.

Q What significance is it if Dr. [REDACTED] threatened to fire you if he doesn't have any authority to do that?

A But he did that. He threatened it.

Q So?

A That is what I asked Dr. Wood later on, why did you ask me for it? So we had a tenuous relationship with Dr. Wood, because I believe Dr. Wood was breaking federal rules of NIH funding. The department was keeping two sets of books.

One was the clinical workbook,

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like we are discussing, how many days you have clinical. And then for whatever reason, they were not accounting for all the call work we were doing.

And, for example, when you do a 24-hour call, right, you have done a certain amount of clinical work for which you bill patients. They would consider that as research work. And I found that to be a big problem, because we are billing patients for our services.

And as well as that, we are meeting the goals of the research program. It was cutting down the research time. And in 2005, everybody has these cuts of research time. But in 2005, which was the last year of my K08 grant, and I was desperate for my time, in the month of July, I didn't get any research time at all. The whole month, not a single day. And other people were getting research time. And that became a big issue, because I was supposed to be in protected research time, and I was not getting it.

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And Dr. Wood made a statement saying how we explain the research time. And she said we will give you 75 percent. It means so many days, but it does not include certain weeks of clinical load. It also does not include costs. So it's no costs, certain months out. You are drastically cutting the research time, which was mandated by federal guidelines to be 75 percent. And I never got a clarification for that.

Q Your allegation in this lawsuit is that after you pursued your complaint of research misconduct against Dr. [REDACTED] the allocation of your research time was unfair after that point; is that fair to say?

A Exactly.

Q Prior to your complaining about Dr. [REDACTED] research, was your allocation of research time fair?

A Yeah. I think it was fair in the beginning. It means, the department was giving me some supported time, and I

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had supported time from my grant. From 2010 to about 2014, I was able to do a lot of good work, and I was able to function.

Q So you had no complaints about your allocation of nonclinical time between 2010 and 2014?

A No. I did have complaints about -- because every time we do research, we have to certify the effort. You know, if the NIH gives you money, you have to say hey, how much? And I was asking constantly for guidelines as to what do you consider? Do you consider call as research work or do you consider it as clinical work? So there were issues, but it was not affecting the functioning of what I was doing.

Q Is there a time period at which you have been at Columbia where you were satisfied with your allocation of research time?

A If I was -- look, every department -- I was satisfied in the first four years of my K08 grant because

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everybody had some degree of cut in time, and it was fairly distributed. And I was okay with that.

Q When was that?

A That was the first four years of K08. Because everybody's research time was cut in proportion. There was no favoritism, you understand? But in 2005, I was doing all the clinical work, and I wasn't getting the thing that I was in a protected time period. That became an issue.

Q So what period of time or times, in your view, were you not treated fairly with respect to nonclinical time?

A I think these things have escalated since I raised the complaint. Because by combining the -- adding the ECT days, by reducing nonclinical time support, it became very difficult for me to do experiments, which are basically survival animal experiments. So we plant brain tumors. At a fixed time, we have to treat them. That reverses the outcome.

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These are not the experiments that I used to do in the past where I had healthy animals and I could, you know, have some flexibility. These animals have a brain tumor. If they get sick, they get sick. You have to intervene and do whatever you have to do.

So the models have changed. And I was doing much more sophisticated research than I was doing seven hours in my training grant period. So it had a profound impact.

You may say okay, that's only one nonclinical day he had. Heck, what are you making a deal of? But if you lose one, one, one day, accumulatively, the damage is pretty severe.

Q Well, at the moment, my only question is -- you have the period of time after you filed your research misconduct complaint, and I understand that you believe that was unfair to you with respect to your nonclinical time.

And I guess my question is:

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Isn't it true that before you filed your research misconduct complaint, you also complained about your nonclinical time?

A Yes. The counting of research time in the department has always been a problem, and it has been a violation of federal rules. This has lead to the DPI investigation that was related to how the department allocates research time.

And what I found out in the course of the DPI investigation was that the justification provided by the department for taking away -- for not accounting for our call effort are completely bogus.

MR. HYMAN: Your question, I understand. His answer is dealing with not the time, but how Columbia is keeping a record of that time for purposes of measuring nonclinical time. He believes, as ORI has indicated, or one of them, that there is a question of whether or not call is to be included in nonclinical time.

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Am I right, Joshi?

THE WITNESS: It's not ORI. It's the Department of Programming.

MR. HYMAN: DPI.

THE WITNESS: So DPI has --

MR. HYMAN: Just for the record, there is --

MR. SCHILLING: I actually don't need your clarification for the record, because he can clarify it for the record.

MR. HYMAN: He can, but you're moving on, so we will clarify for the record.

MR. SCHILLING: Okay.

BY MR. SCHILLING:

Q Prior to filing your research misconduct complaint in April of 2015, in the years prior to that, you complained about your allocation of nonclinical time with respect to how you compared to other people within the department; you thought it was harassing; you thought it was unfair; you thought it was retaliatory,

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right?

A I would say -- unfair? I don't know what retaliation to -- what is your allegation? It means, it is because I thought I got an unfair cut of time.

Q As compared to other people within the department?

A Yes.

Q So the issue of your relative assignment of research time has been something that you've been living with well before, and continuing after, you filed your complaint of research misconduct, right?

A We have two issues over here. One is calculation of research time that I had become accustomed to, and then the change that occurred on top of it. The change that occurred on top of it is what are discussing. The background issue of how the department accounts does not factor in these issues. That is a common problem. It has been there. But that is not an issue over here. What we are

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discussing is what happened to me after. That red line that you saw is what we are discussing.

Q That's what you're discussing. My question is going backwards.

A Yeah, but that's a minor issue. And relatively, this is how the department functions. That is a separate issue.

Q Am I --

A If a department calculates something in some ways and that is the official policy, that is the policy you live with.

Q Am I --

A You can protest it, but it doesn't mean that you are -- you know, it doesn't mean that the changes were not superimposed on them.

Q Am I right that prior to the time you filed your complaint of research misconduct in April of 2015, you had complained about your allocation of nonclinical time?

A I had complained about the

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calculation of nonclinical time by the department.

Q Not the allocation to you as compared to others?

A Because that is the justification for cutting everybody's research time, if they are doing that calculation. And people are making money off of it by that calculation, by short-circuiting the grants.

Q Prior to your filing of your complaint of research misconduct, you also complained about not having been promoted, right?

A Yes. The promotion was held up. But at that time, I thought, in my idealistic way, I do good research. My research will continue, and I will get continued funding. But the funding became a problem at some point in time because people were taking note of the non-advancement in my academic career.

MR. SCHILLING: 21.

(Whereupon, E-mail Exchange,

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Dated June 30, 2011, was marked as Joshi Exhibit 21 for identification, as of this date.)

BY MR. SCHILLING:

Q I've placed in front of you a document marked Exhibit 21. It's an e-mail chain. The top e-mail is from you to Dr. Wood, June 30, 2011.

Do you see that?

A Yes.

Q The second photograph, you write, "With such hostility towards me and my work, I don't think it is worth wasting time on promotion."

Do you see that?

A Yes.

Q This is your telling Dr. Wood in June of 2011 that you didn't want to pursue a promotion, even though she had started the conversation with you about being promoted, right?

A Yeah. Let's read the first part of the sentence.

Q Go ahead.

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A "With such hostility" -- and it's Ccd to Anne Taylor. If I write to a dean of faculty development that I am not following a process because it's toxic, I expect Dean Taylor to take some action.

Q Who would make the decision on whether or not you were promoted in June of 2011?

A It would be starting with the chairman.

Q And then it goes to the committee?

A It then goes to the committee.

Q Did you think the committee was going to be unfair to you?

A Oh, yes. The committee would be unfair to me.

Q Why?

A Because Dr. [REDACTED] was there.

Q Because he's on the committee?

A Yes.

Q So rather than take your chances with the committee, you took the certainty of not getting promoted?

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A No. I said -- read carefully. "With such hostility towards me and my work," CC Anne Taylor. I was expecting Anne Taylor to be more robust in following up why some faculty is walking out of this process.

Q In your mind, did you withdraw your request for promotion vis-a-vis Dr. Wood?

A Under those conditions, yes. Under the circumstances of being harassed and being threatened, yes. But I had hoped that Anne Taylor would be more proactive.

Q One of the things that Dr. Wood asked was that you meet with her in person; do you recall that?

A Yes.

Q And you refused?

A I --

Q Yes or no.

A No. With regard to promotion, I've gone to meet Dr. Wood on other occasions, and she did not meet with me,

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and then blamed me for not showing up.  
And I've got e-mails to prove that.

So the only places where I  
didn't want to meet Dr. Wood -- and I did  
meet Dr. Wood from time to time, when  
needed. It was not that we didn't meet,  
however.

Q 2014, did you have conversations  
with Dr. Emala about pursuing a promotion  
at that point?

A Yeah. I was of two minds,  
because I was feeling that my grants were  
getting hurt. We had a dinner, I think,  
at my house. And during the dinner, the  
issue of promotion came up. I'm not  
certain what we discussed at the dinner at  
my house, whether I should apply for a  
promotion and things like that.

Q This is a dinner with Dr. Emala?

A Dr. Emala and Dr. Bigio had been  
in my house at some point at that time,  
and I think that is where we discussed  
promotion issues.

Q Who was the other doctor?

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A Dr. Bigio from Boston University  
was one of my coresearchers.

MR. SCHILLING: 22.

(Whereupon, E-mail Exchange,

Dated June 16, 2014, was marked as  
Joshi Exhibit 22 for identification,  
as of this date.)

BY MR. SCHILLING:

Q I've placed in front you a  
document marked Exhibit 22, which is an  
e-mail chain. The top e-mail chain is  
from you to Dr. Emala, June 16, 2014.

Do you have that document in  
front of you?

A Yeah.

Q That bottom e-mail is from you  
to Dr. Emala, "Subject: CV."

Do you see that one?

A Yeah.

Q You write, "Here is the CV. I  
was very conflicted to submit it, because  
it will give legitimacy to a totally  
idiosyncratic, dishonest and a sham  
process."

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Do you see that?

A Yes.

Q You had never participated in  
the process, have you?

A No. I was seeing other people  
being promoted.

Q And that led you to believe it  
was an idiosyncratic, dishonest and sham  
process?

A Yes. There were people who had  
hardly any achievements that were promoted  
in the department, and there were people  
with great achievements who were being put  
down.

Q And so as a result of that, you  
decided this was not for you?

A No. It was whatever the  
chairman wanted. And the chairman was  
hostile toward me, and that's why I was  
afraid of putting in the CV and taking the  
stress of all that. And at the same time,  
I was conflicted because my grants were  
getting hurt.

And I was talking to people

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about, is promotion an issue over here?  
Because, you know, when you don't advance  
in your academic career, it's not taken  
positively.

Q Who did you speak to about that  
issue in 2014?

A I think it was Bigio and Emala.  
What I recall, in 2014, we had a dinner  
together, and the issue of promotion was  
discussed over there, whether I should go  
ahead and what should I not do or what  
should I do.

Q What did they recommend?

A They said look, you should try  
for it, and that's probably why I followed  
up on it.

Q But then you ultimately didn't  
try for it?

A Well, I didn't send the CV, but  
I went back and forth. Because the last  
time I did it, she attacked my CV, and she  
was harassing me, basically, to reveal  
things.

Q Well, she thought there were

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 2 inaccuracies in your CV that she asked you  
 3 to correct?  
 4 A Yeah.  
 5 MR. JEREMIAS: Objection.  
 6 A She was citing some unpublished  
 7 papers.  
 8 Q Top e-mail, you write, "Let's  
 9 just forget it."  
 10 Do you see that?  
 11 A Yes.  
 12 Q You made a decision in 2014 not  
 13 to proceed with your promotion, yes?  
 14 A I, under the circumstances, and  
 15 how dramatic it would be and distracting  
 16 for my research, yes, I backed down at  
 17 that point.  
 18 Q Yes?  
 19 A Yes.  
 20 MR. SCHILLING: 23.  
 21 (Whereupon, E-mail Chain, Dated  
 22 October 15, 2017, was marked as Joshi  
 23 Exhibit 23 for identification, as of  
 24 this date.)  
 25 Q Dr. Joshi, I've placed in front

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1 CONFIDENTIAL  
 2 of you a document marked Exhibit 23, which  
 3 is an e-mail exchange with Alan Johns.  
 4 Do you have that in front of  
 5 you?  
 6 A Yes.  
 7 Q Who is Alan Johns?  
 8 A The University of South Carolina  
 9 was trying to recruit me for cancer  
 10 research.  
 11 Q What happened with that?  
 12 A They were very worried why I was  
 13 not being promoted. They said you have  
 14 such a good CV, and why is it that you  
 15 were not promoted?  
 16 Q Did you want to get a job at  
 17 South Carolina?  
 18 A It was director of cancer  
 19 research, and I was keen to do it. But  
 20 the thing was that my promotion was a big  
 21 issue for them.  
 22 Q How was that expressed?  
 23 A I think they called me up,  
 24 phoned me up, and discussed it, and some  
 25 e-mails at that time.

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 2 Q Other than this e-mail?  
 3 A No. This is the entire log, I  
 4 think. There was not -- it was over a few  
 5 days.  
 6 Q So this e-mail exchange,  
 7 Exhibit 23, is the entirety of their  
 8 raising with you the issue of your rank?  
 9 A I think so. I think there were  
 10 some phone calls that he talked to me a  
 11 couple of times, if I don't misrecollect.  
 12 Q Do you recall those phone calls?  
 13 A It was just like what is your  
 14 research and how are you funded and what  
 15 do you want to do? He was a recruiter.  
 16 He was not from the actual team.  
 17 Q So did anybody at the University  
 18 of South Carolina comment to you?  
 19 A No. They didn't come back after  
 20 this.  
 21 Q So Tyler & Company is the  
 22 recruiting agency?  
 23 A Yeah, I think so.  
 24 Q In your e-mail back to Alan  
 25 Johns, in the middle of the page, you

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 2 write, "It is a complicated story. I  
 3 never applied for a promotion, as I was  
 4 uncomfortable with the ethics of my  
 5 previous chair."  
 6 Do you see that?  
 7 A Yeah.  
 8 Q Is it true that as of  
 9 October 15, 2017, you had never before  
 10 applied for a promotion?  
 11 A I didn't apply formally for a  
 12 promotion. I just approached her, and  
 13 then the CV problem occurred.  
 14 Q The third sentence there says,  
 15 "Didn't need a promotion. Have had strong  
 16 support at the NCI, and I can focus on my  
 17 work."  
 18 Do you see that?  
 19 A Yes.  
 20 Q What did you mean when you said  
 21 that you didn't need a promotion?  
 22 A Well, I was getting funded for a  
 23 while. I was not having problems funding  
 24 it. So if the research could continue, I  
 25 was not so focused on the promotion as I

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1 CONFIDENTIAL  
 2 was focused on the research.  
 3 Q So you only want a promotion for  
 4 the purposes of the research?  
 5 A That was the main part, driving  
 6 force, when I came into 2014. And also,  
 7 it was affecting my employment. You know,  
 8 people were asking why I'm not promoted.  
 9 You have two grants, three grants. Things  
 10 like that.  
 11 Q What's the difference in salary  
 12 between an assistant and an associate  
 13 professor?  
 14 A I have never looked at my  
 15 salary, but it's about 20-, 25,000.  
 16 Q So today you're an associate  
 17 professor?  
 18 A Yes.  
 19 Q You make 25,000 more than you  
 20 made before you were promoted?  
 21 A Yes, base salary. This is an  
 22 approximation. Don't quote me to it.  
 23 Q I'm holding you to it. We're on  
 24 the record, under oath.  
 25 A Approximately. Not definite

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1 CONFIDENTIAL  
 2 numbers.  
 3 Q Okay.  
 4 Did there come a point in time  
 5 after Dr. Brambrink became chair that you  
 6 had a discussion with him with regard to  
 7 promotion?  
 8 A Absolutely.  
 9 Q When?  
 10 A So I approached for promotion --  
 11 I think it was November 30th that I wrote  
 12 to him. But I mentioned it even in my  
 13 first conversation with him, which was in  
 14 July -- in August, that academic rank was  
 15 affecting my ability to apply for --  
 16 You know, there was an  
 17 editorship of our specialty journal, and  
 18 they wanted me to apply for it. And I  
 19 thought as an assistant professor, I would  
 20 not make the cut to be the editorial chief  
 21 of a major journal in the specialty.  
 22 But formally, I asked him for a  
 23 promotion on November 30th, I think, if  
 24 I'm not mistaken.  
 25 Q Let me ask you -- without

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1 CONFIDENTIAL  
 2 marking it, I'm showing you an e-mail  
 3 dated November 30, 2016, from you to  
 4 Dr. Brambrink, which references a change  
 5 of title.  
 6 Is that what you've been  
 7 referring to?  
 8 A Yes, exactly.  
 9 Q And what was Dr. Brambrink's  
 10 response to your request to be promoted?  
 11 A I think initially he -- I don't  
 12 know whether it was in this e-mail or a  
 13 meeting that we had afterward. Initially,  
 14 he refused promotion. He told me in the  
 15 meeting, when I raised the issue of  
 16 promotion, verbally -- this was not  
 17 followed up.  
 18 And I asked Chas whether or not  
 19 he discussed it by e-mail. He said he  
 20 didn't hear about it, and the matter laid  
 21 dormant for a few months. And then in one  
 22 of the meetings, I asked him could you put  
 23 me up for promotion or title change? And  
 24 he said chairmen have nothing to do with  
 25 title changes.

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 2 At that time, I actually  
 3 reviewed the funding data, and I was  
 4 pretty convinced that he does not have the  
 5 best interest in mind. So I, kind of,  
 6 said the chairman starts the process.  
 7 Please check with the faculty handbook.  
 8 And then he, kind of, didn't act on it.  
 9 And then we had a meeting in  
 10 August, after the lawsuit was filed, and  
 11 then I was put up for promotion in  
 12 September of '17.  
 13 Q Tell me everything you remember  
 14 about that first meeting in which he  
 15 refused you promotion.  
 16 A I think it was in -- somewhere  
 17 in the early part of 2017. And I asked  
 18 him specifically, could you put me up for  
 19 promotion?  
 20 And he said why haven't you been  
 21 promoted for all these years?  
 22 And I said that's a difficult  
 23 story, and I would not like to discuss  
 24 negative things, and, you know, let's go  
 25 on forward.

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And he said well, you have not been promoted.

I said but other people like Bessie Kachulis, who was also not promoted for a very long time, has recently been promoted.

He said Bessie Kachulis is a different case.

I said how so?

So then nothing happened after that. He basically he said no. And I followed it up with e-mails with Chas Emala. I said did you hear anything about -- and I think I also raised the issue of title change and joint appointments at some point in time. But he said no, I have heard nothing about --

So about the joint appointment, he said no, you go and take lectures in biomedical engineering and try to establish a rapport, and then build up a track. And when you do it, I'll push it forward.

Q He's talking about the joint

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not a practical thing, considering the time pressure that I had been put under by his own various deadlines.

With regard to promotion, he said nothing. He said Bessie was not -- it was a different case for Bessie, and the matter was closed. And then I raised the matter again in August of '17, after the lawsuit was filed. And in September, the process began.

Q So are you attributing the fact that the process started due to the lawsuit?

A It is the timing.

Q Do you have any other reason other than the timing?

A Well, if you ask for a promotion -- you already have testimony from several people that I could have been -- or two people that I could have been full professor by then, no problem.

Brambrink had no problem putting up for professorship, full professorship. That was a statement or e-mails, whatever.

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appointment at that point?

A The joint appointment to biomedical engineering. So he gave me, sort of, a very convoluted pathway, which is his way of doing things.

Q What's the right way to pursue that?

He's suggesting that you develop a relationship with biomedical engineering.

A No. Generally, you see the main thing, the way it is done is you publish a lot of papers together.

And I have published extensively, say, with neurosurgery previously. And for whatever reason, you know, my neurosurgery appointment was declined, although Dr. Solomon wanted to consider it before. But he did not want to consider it afterward.

So with biomedical engineering, he wanted me to go take lectures, and then build up the resume so that they apply for a joint appointment. But that was really

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But when I asked for it initially, he said a blanket no. He said why weren't you promoted before?

I said -- so he says -- and I refused to -- I didn't want to talk about negative things. We are starting a new chapter. Let's start a new case. Let's go forward and be positive.

Q So he told you at that first meeting that he would not promote you?

A No. He said why weren't you promoted before?

Q That's very different, isn't it?

A Yeah, but --

Q That's a question.

A He basically -- yeah, he put it as a question, which is a negative question.

Q Why?

A Because he wasn't, like, saying I will promote you.

Q He wasn't saying he wasn't going to promote you; he was asking you?

A He did not follow up on it. My

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recollection is hazy over here, but hazy in the sense of his immediate response. What I remember right now is he when he went back to me and said why weren't you promoted before?

Q You understand, don't you, that it's significantly different to say I'm refusing you a promotion versus asking you why you weren't promoted before?

MR. HYMAN: Objection.

Q Did you not testify earlier that Dr. Brambrink refused at this meeting?

MR. HYMAN: Argumentative.

MR. SCHILLING: I'm asking to clarify what Dr. Joshi said. He said "refused."

BY MR. SCHILLING:

Q You said Dr. Brambrink refused, no?

A No. That's -- I don't remember exactly what his words were, but what I got from it was he refused it.

Q And you got that from it based solely on his question, why haven't you

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Q He supported you for the two-step move, right?

A Yes.

Q Why would he do that if he wants to retaliate against you because of Dr. [REDACTED] complaint?

MR. HYMAN: Objection.

MR. JEREMIAS: Objection.

MR. SCHILLING: Why is that objectionable? I'm trying to reconcile what he has said.

MR. JEREMIAS: You're asking him --

MR. HYMAN: You're asking for his --

MR. SCHILLING: He's testified that he believes this is retaliatory, and I'm saying why do you think that when he's fully supportive of your two-step promotion process? How do you reconcile that?

Objection to form noted.

A No. The reason I think it's retaliatory is because he was pushed into

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been promoted before?

A Right. And it was negative. And then when I said Bessie has been promoted, he said Bessie is a different case. So there were two negatives coming out at me. So he was willing to accept Bessie as a case, but not me.

Q He didn't tell you not to apply?

A He did not follow it up at all. There was no answer after that.

Q He didn't tell you in a meeting don't bother applying, Dr. Joshi, because it's not going to happen?

A But he didn't say "you apply too."

Q Can you answer my question Dr. Joshi?

A Yes. He didn't say that. But it's a partial statement.

Q He ultimately supported your promotion?

A He ultimately supported my promotion, and he also said that I am due for full professorship.

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promoting me, and then realized that my CV was good enough and strong enough when he reviewed it. So he was not in favor of my promotion at that time, when he first came in.

Now, whether the lawsuit changed it, whether he learned something more about my CV, or whether he learned that people were recommending my promotion, it's something different. Who knows what the circumstances are.

Q You don't know?

A I don't know, and neither do you.

Q It's true.

A But even -- let me just go back for one other clarification.

Q Sure.

A After I met Dr. Brambrink, Dr. Emala was standing outside the door. And I raised the issue of promotion, and he categorically stated that I should have applied for promotion when I had two R01s. Now, he also didn't say don't apply, but

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he made it a point that I failed to apply when I had two R01s, and, hence, it was in limbo.

Q What was in limbo?

A Promotion issues, decisions about promotions.

Q Dr. Emala said to you it would have been good for you to apply when you had the two grants?

A Yes.

Q But you didn't apply when you had two grants?

A No, I didn't. But the thing is "you should have applied" has a negative connotation.

MR. SCHILLING: 24.

(Whereupon, E-mail Chain, Dated September 29, 2017, was marked as Joshi Exhibit 24 for identification, as of this date.)

BY MR. SCHILLING:

Q Dr. Joshi, I've given you a document marked Exhibit 24, which is an e-mail exchange between Dr. Whittington

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the same time, I've got to see his actions that were going on at the same time with my lab and other things, so I have concerns.

Q But you don't think he's lying when he says he's supportive of a two-step promotion?

A I don't -- as I said earlier on, my trust in judging people has been considerably eroded, having read the e-mails that they write behind your back to other people and what they say to your face.

Q Well, this is behind your back, isn't it, and he's saying he's fully supportive of promoting you two steps?

A Exactly. But at the same time, he had -- I was not put up for full promotion.

Q To full professor?

A To full professor.

Q Why is that?

A We don't know. But what Dr. Anne Taylor said over here was it was

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and Dr. Brambrink in September of 2017.

Do you have that in front of you?

A Yes.

Q Doctor, I realize you're not copied on this, but you've seen this before, yes?

A I've seen it, probably, in the course of the depositions or disclosure.

Q The middle -- the bottom e-mail, on the bottom e-mail, Dr. Whittington is stating that he would be supportive of your being advanced to full professor.

Do you see that?

A Uh-huh.

Q In the middle e-mail, Dr. Brambrink is in agreement?

A Uh-huh.

Q Do you have any reason to doubt Dr. Brambrink's sincerity in this e-mail?

A Do I have any reason to doubt Dr. Brambrink's sincerity in this e-mail?

Q Yes.

A Not from what I read. But at

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a departmental decision to put somebody for full professor, and that did not happen.

And then we heard Dr. Emala say that this would have been a contentious appointment or promotion process, and they were told at the start of the meeting that this would all be before associate professor.

So there is a difference between the testimony of Dr. Taylor and that of Dr. Emala.

MR. SCHILLING: 25.

(Whereupon, Letter, Dated April 30, 2018, was marked as Joshi Exhibit 25 for identification, as of this date.)

BY MR. SCHILLING:

Q Dr. Joshi, I've placed in front of you a document marked Exhibit 25, a letter dated April 30, 2018, from Dr. Brambrink to Dr. Goldman.

Do you have that in front of you?

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1 CONFIDENTIAL  
 2 A Uh-huh.  
 3 Q Have you seen this document  
 4 before?  
 5 A Only in the course of  
 6 disclosures.  
 7 Q You didn't see this at the time?  
 8 A No. This is a confidential  
 9 process. It's not -- I'm not privy to it.  
 10 Q When you saw this for the first  
 11 time, were you surprised that  
 12 Dr. Brambrink was expressing the highest  
 13 level of enthusiasm for your promotion?  
 14 A I think most promotion letters  
 15 begin with a similar tone, so yes, I was a  
 16 little hesitant of a recommendation that  
 17 begin with stellar comments.  
 18 Q He's not required to write a  
 19 letter like this, is he?  
 20 A He hasn't made the best case on  
 21 what he's doing.  
 22 Q He was fully supportive of your  
 23 promotion, yes?  
 24 A Not to full professor.  
 25 Q We just saw that e-mail before

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1 CONFIDENTIAL  
 2 where he was --  
 3 A That's for associate, yes. Yes,  
 4 I was amply qualified for that, but I was  
 5 also qualified for full professorship.  
 6 Q And Dr. Brambrink agrees?  
 7 A He agreed, but he didn't put me  
 8 up for full professor. He could have.  
 9 Q He could have?  
 10 A Yes. That's what Dr. Taylor  
 11 said, didn't she?  
 12 MR. SCHILLING: 26.  
 13 (Whereupon, E-mail, Dated  
 14 July 7, 2005, was marked as Joshi  
 15 Exhibit 26 for identification, as of  
 16 this date.)  
 17 BY MR. SCHILLING:  
 18 Q Dr. Joshi, I'm placing in front  
 19 you a document marked Exhibit 26.  
 20 A Yeah.  
 21 Q It's an e-mail from July 2005  
 22 from you to Dr. [REDACTED]  
 23 A Uh-huh.  
 24 Q The second paragraph in this  
 25 e-mail, the first sentence, you write,

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1 CONFIDENTIAL  
 2 "Why is it that several people in the  
 3 department are getting nonclinical time,  
 4 and those of us whose grants mandates  
 5 nonclinical time are not getting any in  
 6 the whole month!"  
 7 Do you see that?  
 8 A Yes.  
 9 Q In 2005, you were complaining  
 10 about your allocation of nonclinical time  
 11 as compared to other people in the  
 12 department, yes?  
 13 A Yes. This was 2005.  
 14 MR. SCHILLING: 27.  
 15 (Whereupon, E-mail, Dated  
 16 July 14, 2015, was marked as Joshi  
 17 Exhibit 27 for identification, as of  
 18 this date.)  
 19 BY MR. SCHILLING:  
 20 Q I'm placing in front of you a  
 21 document marked Exhibit 27, another e-mail  
 22 from 2005 between you and Dr. [REDACTED]  
 23 A Right.  
 24 Q In the first paragraph, the last  
 25 two sentences, you write, "Were you lying

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1 CONFIDENTIAL  
 2 at the time or now? I do not know. But  
 3 as you know, I no longer trust you."  
 4 Do you see that?  
 5 A Yeah.  
 6 Q You believed as far back as 2005  
 7 that [REDACTED] could not be trusted?  
 8 A [REDACTED] could not be trusted  
 9 in terms of what he says verbally, because  
 10 he was threatening me, on one hand, and  
 11 saying nasty things to me about research  
 12 time allocation and things like that.  
 13 And this was a particularly  
 14 tough time. It was the last year of my  
 15 K08 award, and, as I explained to you  
 16 before, I was not given a single clinical  
 17 research day for the whole month, and  
 18 other people were getting nonclinical  
 19 time.  
 20 Q Why was that?  
 21 A Because that is what the  
 22 chairman does. It's the chairman's  
 23 decision.  
 24 Q And why did the chairman do that  
 25 at that time?

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A I have no idea. But other people were getting nonclinical time.

MR. SCHILLING: 28.

(Whereupon, E-mail Chain, Dated November 16, 2009, was marked as Joshi Exhibit 28 for identification, as of this date.)

BY MR. SCHILLING:

Q Dr. Joshi, I've handed you an e-mail chain, Exhibit 28.

Do you have that in front of you?

A Yes.

Q The top e-mail is from you to Dr. [REDACTED] November 16, 2009.

Do you see that?

A Yes.

Q Why are you writing in all caps?

A Because he was denying something that he said to me. He said so many times that if you don't do this, you'll lose the job. They were all one-on-one conversations.

But in one instance in 2007, we

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were in a meeting with Carol Hirshman, and he just belted out things, like go and see a shrink. You know, those were very hard words. And then he denies saying that. So if somebody says those things, it's hurtful.

Q Are you still carrying that to this day?

A No. I think I blame the system. I actually see [REDACTED] as a victim of a system and an institution, which covers up wrongdoings and retaliates against people.

Q You're not mad today that [REDACTED] told you to see a shrink in 2000 --

A Well, it does hurt. You don't forget somebody saying that to you, to be honest with you. But it's not something you carry at all. It's okay.

Like, as a son of a scientist who had seen a lot of research misconduct, what troubles me most is the way the system behaves. And the system retaliates against those who try to do the right thing.

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Q What does that have to do with what was going on in Dr. Hirshman's office at the time?

A Hirshman called this meeting, so she was a witness to what [REDACTED] was saying. In other cases, it was his word against my word.

Q What was the point of the meeting?

A Just threatening me.

Q No, why did the three of you get together?

A I was just paged to come to her office, and he started belting down on me.

Q What about?

A The criticism of Dr. Wood for the way she allocates the nonclinical time.

Q So you criticized Dr. Wood, and Dr. [REDACTED] was criticizing you for criticizing Dr. Wood?

A And there were also problems with lab space and lab closures and the way the money was being used, the grant

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money was being used. There were issues with that. But when you deny saying something so hurtful, it's something you feel.

Q And you were angry?

A Anger is -- you must realize that there are two levels. One is science and what is happening to science and the process. I'm more annoyed with the process that leads to coverups and scientific corruption, and I feel that we have created an atmosphere where publications have been -- push people to do things which are not right.

Q But what does that have to do with the issues you were discussing in Carol Hirshman's office?

A This, from what I recall -- because maybe those are the only words that resonated in my ears. That's all I remember at that meeting, that I was called, I was sitting at the door, [REDACTED] was sitting toward the window, Carol Hirshman was sitting there, and he is

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1 CONFIDENTIAL  
 2 trying to tell me these things.  
 3 Q But it's not about research  
 4 misconduct?  
 5 A No. These were related to the  
 6 ways grant money was being used and the  
 7 allocation of nonclinical time.  
 8 Q But not research misconduct?  
 9 A No. But there's an ongoing --  
 10 in 2009, there was an issue with Shafer  
 11 and his publications, and Basman  
 12 (phonetic) and his publications, and  
 13 things like that. So the issue here is  
 14 how the system retaliates against you for  
 15 raising concerns.  
 16 Q Can I ask a question? Going  
 17 back to Exhibit 20, this deck, how long  
 18 did it take you to prepare that?  
 19 A I don't know. Not much.  
 20 Q Not much?  
 21 A Once you do the tables, probably  
 22 two hours or something.  
 23 Q Two hours?  
 24 A This was -- the main time is the  
 25 data collection.

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1 CONFIDENTIAL  
 2 Q How long did the data collection  
 3 portion of that take?  
 4 A Maybe a day total.  
 5 Q How many total days have you  
 6 expended complaining about nonclinical  
 7 allocation?  
 8 A I don't have any idea of that.  
 9 But this is a very rare analysis I had to  
 10 do to make a point.  
 11 Q But you didn't give it to  
 12 anybody?  
 13 A Yeah. But I had to prepare it  
 14 to find out whether this is actually  
 15 happening to me.  
 16 Q Going back to Exhibit 28, the  
 17 all caps at the top there doesn't reflect  
 18 that you're annoyed or angry?  
 19 A I was upset when he denied that  
 20 he never said that, which I knew was a  
 21 false statement.  
 22 Q In the e-mail below to Dr. Wood  
 23 and Dr. [REDACTED] the second paragraph that  
 24 begins with "most significant," do you see  
 25 that?

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1 CONFIDENTIAL  
 2 A Yes.  
 3 Q The last sentence reads, "NC  
 4 time allocation is a very effective weapon  
 5 that the chair has in shaping or  
 6 destroying the career of, and yet there  
 7 were/are no guidelines for NC time  
 8 allocation as they are related to the  
 9 funding mechanisms for our department."  
 10 Do you see that?  
 11 A Yes.  
 12 Q In 2009, did you think that  
 13 Dr. Wood was using NC time allocation as a  
 14 weapon against you?  
 15 A She was certainly cutting my NC  
 16 time and not letting me do research fully.  
 17 And then when I went to Anne Taylor and  
 18 other people, the situation improved.  
 19 Q Why was she doing that at the  
 20 time, as far as you know?  
 21 A I do not know the specific  
 22 reasons of why Margaret raised the issue.  
 23 But what was -- it has been a consistent  
 24 problem. The way the department has  
 25 allocated research time has been a

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1 CONFIDENTIAL  
 2 friction point. It's an issue that  
 3 remains unresolved until this day.  
 4 The department maintains that  
 5 the clinical work we do is only the daily  
 6 schedule, but all the call work we do and  
 7 we bill for is not properly accounted for.  
 8 MR. SCHILLING: 29.  
 9 (Whereupon, E-mail Chain, Dated  
 10 July 22, 2009, was marked as Joshi  
 11 Exhibit 29 for identification, as of  
 12 this date.)  
 13 BY MR. SCHILLING:  
 14 Q Dr. Joshi, I'm showing you  
 15 Exhibit 29.  
 16 A Yeah.  
 17 Q It's an e-mail exchange from  
 18 2009. The top e-mail is from you to  
 19 Dr. [REDACTED] July 22, 2009.  
 20 Do you see that?  
 21 A Yeah.  
 22 Q The e-mail below that is from  
 23 Dr. [REDACTED] to you?  
 24 A Yeah.  
 25 Q And he says, "I would like to

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1 sit down with you and Gene tomorrow to  
2 discuss your nonclinical time, as well as  
3 the issue of clinical days and Milstein  
4 call."

5 Do you see that?

6 A Yeah.

7 Q And you respond, "No need. I  
8 have all the data, and I will address it  
9 with people who are honest and follow the  
10 rules." You go on to say, "I am fed up  
11 with lies and half truths, deception and  
12 spin."

13 Do you see that?

14 A Yes.

15 Q This is an example of Dr. [REDACTED]  
16 offering to sit down with you and discuss  
17 nonclinical time, and you're refusing,  
18 right?

19 A Right.

20 MR. SCHILLING: 30.

21 (Whereupon, E-mail Chain, Dated  
22 January 17, 2011, was marked as Joshi  
23 Exhibit 30 for identification, as of  
24 this date.)  
25

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1 BY MR. SCHILLING:

2 Q I'm showing you Exhibit 30,  
3 which is an e-mail. The top e-mail is  
4 from you to Dr. Emala, January 17, 2011.

5 Do you have that in front of you?

6 A Yeah.

7 Q Is this an e-mail you sent to  
8 Dr. Emala?

9 A Yes.

10 Q The third paragraph down at the  
11 top e-mail says, "This fits into the  
12 pattern of ongoing discrimination against  
13 my research and continued denial of  
14 opportunities, whether they are lab space,  
15 research time, departmental funds,  
16 promotion, tenure, access to medical  
17 students, fellows and residents, teaching  
18 and administrative opportunities."

19 Do you see that?

20 A Uh-huh.

21 Q You were complaining about all  
22 those issues before you filed your  
23 research misconduct complaint against  
24 Dr. [REDACTED] in March of 2015, right?  
25

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1 A Right. So after this, what  
2 happened -- and is in follow up on the  
3 last e-mail you showed. I think we met  
4 Anne Taylor. Anne Taylor gave me the lab  
5 space. She intervened somewhere around  
6 this time. And we were able to do  
7 research. And I was able to do some  
8 research at least, starting from '11 to  
9 about '14, '15.

10 And so there was a period when  
11 these issues were not so critical. But  
12 yes, there is -- throughout this thing,  
13 you'll see a single theme that is running  
14 all through it. It is the accounting of  
15 nonclinical time, and that is a structural  
16 issue in the way the department functions.

17 Q And that issue has existed since  
18 when?

19 A That issue is the way the  
20 department accounting process works, and  
21 it is contrary to federal guidelines.

22 Q And it's not only a structural  
23 issue; you think it's also being yielded  
24 as a weapon by the chairs?  
25

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1 A Yeah. If you cut down the  
2 times, it can hurt people.

3 MR. SCHILLING: Let's take a  
4 break.

5 (Thereupon, a recess was taken,  
6 and then the proceedings continued as  
7 follows:)

8 MR. SCHILLING: 31.

9 (Whereupon, E-mail Exchange,  
10 Dated March 4, 2015, was marked as  
11 Joshi Exhibit 31 for identification,  
12 as of this date.)

13 BY MR. SCHILLING:

14 Q Dr. Joshi, I'm showing you  
15 Exhibit 31. It's a two-page e-mail  
16 exchange. The top e-mail is from you to  
17 Dr. Emala, Wednesday, March 4, 2015.

18 Do you have that in front of  
19 you?

20 A Yeah.

21 Q The bottom e-mail on this page  
22 is also March 4th, from you to Dr. Wood  
23 and Dr. Emala, "Subject: Adjunct  
24 Appointment and Title Change."  
25

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 2 Do you see that?  
 3 A Yeah.  
 4 Q You say, "Last grant was  
 5 triaged."  
 6 Do you see that?  
 7 A Yes.  
 8 Q What does that mean?  
 9 A It was not scored.  
 10 Q Is that a good or bad thing?  
 11 A It's not good.  
 12 Q It's not good?  
 13 A No.  
 14 Q If it's triaged, does that  
 15 mean -- what does that mean in terms of  
 16 how it was considered relative to the  
 17 other applications?  
 18 A It's supposed to be in the  
 19 50th percentile. So it was below the  
 20 50th percentile.  
 21 Q So the collaborators on the  
 22 projects were Irving, Bruce and Deng.  
 23 Who were they?  
 24 A They were researchers who were  
 25 on the project that we submitted at that

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1 CONFIDENTIAL  
 2 time. We were developing new drugs for  
 3 treatment of cancer, and they were  
 4 synthesizing some of those -- Jeff Bruce  
 5 was a neurosurgeon who works with me, and  
 6 Deng is a synthetic chemist.  
 7 Q Are they all at Columbia?  
 8 A Yeah, they're all Columbia.  
 9 Q What are their titles?  
 10 A Jeff Bruce is -- Irving -- I'm  
 11 sorry. Irving is also here. Irving is a  
 12 professor of biomedical engineering at  
 13 Boston University, who is a long-time  
 14 collaborator. He works on optical  
 15 techniques that we apply for brain cancer  
 16 research. Bruce is a neurosurgeon. Deng  
 17 is a synthetic chemist. So Bruce and Deng  
 18 are at Columbia. Irving is at Boston  
 19 University.  
 20 Q Are Bruce and Deng professors?  
 21 A Deng runs the lab. He's a  
 22 senior technician, but he's in charge of  
 23 the organic synthetic chemistry lab.  
 24 Bruce is a professor.  
 25 Q Assistant professor; associate

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1 CONFIDENTIAL  
 2 professor?  
 3 A No. He is a full professor. He  
 4 is the vice chair of research.  
 5 Q Were you proposed as the PI?  
 6 A Yes. I was the PI, and these  
 7 were coinvestigators.  
 8 Q How does that work, as between  
 9 PI and coinvestigators?  
 10 A You are the lead guy. It is  
 11 your project.  
 12 Q Do their credentials help with  
 13 respect to the application and the  
 14 likelihood of funding?  
 15 A We thought that was the case.  
 16 So in subsequent presentations that we  
 17 did, we made Dr. Bruce co-PI. It means I  
 18 still have the lead in the project, but he  
 19 is, like, kind of taking care of some  
 20 aspects of the project. And that,  
 21 perhaps, factored in in our improving  
 22 score so that we could make a higher cut.  
 23 Q Going back to Exhibit 4, on  
 24 which of those grants was he made the  
 25 co-PI?

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 2 A They're all -- Bruce has always  
 3 been a co-PI. No, co-PI is the recent  
 4 last two grants. The last two grants in  
 5 '17 and '18, he was made co-PI, and those  
 6 are the ones that were getting scored. So  
 7 the one that is shown as pending and not  
 8 funded, last two.  
 9 Q Right.  
 10 Both of those were not funded?  
 11 A Right. But on those two, he was  
 12 made co-PI, and those were the ones that  
 13 were getting scored. Because he does  
 14 intra-arterial -- he does direct delivery  
 15 of cancer drugs to the brain, and he has  
 16 recognition in the field as his rank.  
 17 Q And as of July 2018, you were an  
 18 associate professor; is that right?  
 19 A In the last one, yes.  
 20 Q And even though you were an  
 21 associate professor and he was a full  
 22 professor and you were co-PIs, the grant  
 23 still wasn't funded; is that right?  
 24 A Yes.  
 25 Q This --

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A But I just became an associate professor, yes, at that point.

Q Does the grant application say how long you've been an associate professor?

A Yes.

Q Was there any feedback that you got with respect to that last grant that your title over your career had an impact on the score?

A No. We got commented on the previous grant, which explicitly mentioned that -- you know, the assistant professor and this mid-level physician scientist.

Q Do you believe that's the reason that that grant was not funded?

A I think it becomes one of the factors that operate. And when you are in a very competitive environment for cancer research, for brain cancer research, it's a very difficult field of research. This is one of the toughest cancers to treat. Those things matter disproportionately.

That is why an appointment to

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neurosurgery, which is what I've said in this application, was far more important than the biomedical engineering thing that on Ansgar was saying.

Q What's the basis for your belief that the length of time that you've been an associate professor is impactful on the likelihood of your going to get funding?

A In an ideal world, academic rank should not be a factor at all. It should only be the quality of research. But that is not how the real world operates. In the real world, your academic rank and your position matter quite a bit. But it is one of the main factors in the grant. And the reviewers have made a comment, why is he this?

Q I got it. We'll get to that one.

But is it ever, in your experience, the deciding factor, the rank of the PI?

A It's not so much of a deciding factor. But what becomes very important

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is the joint appointment to neurosurgery when you're doing brain tumor research. That also becomes a major factor. So a title change to neurosurgery would have really helped this grant.

Q Had you coauthored articles with people in the department of neurosurgery?

A Absolutely.

Q How many?

A About 15, 16.

Q Who have you coauthored with in the department of neurosurgery?

A Largely Jeff Bruce, Sean Lavine. Technically some of the radiologists also work in the department of neurosurgery. Fred Meyers and others, they have joint appointments, so they are there, and a lot of residents who are trained there who have mentored over time.

Q Do you think that if you would have had a joint appointment in neurosurgery, you would have been funded on any of these that appear here that show "not funded"?

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A I would have gotten a better review. So when you are triaged, you don't get any comments back. You don't get a guideline as to how the grant is doing, so your attempts are not very productive.

When your current grant is formally reviewed, you get a set of critical points. Then you can address those points, and it makes your chances of getting it next time much better. By -- if I had better comments, just that marginal improvement, my chances would have increased.

Q But do you have a basis to say that your chances would have increased to the point which it would have been decisive, and you would have gotten a grant that you would not otherwise have gotten?

A I can only refer to people at NIH who have reviewed a lot more grants than anybody in the department and who closely know my research. And their

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<p>1 CONFIDENTIAL</p> <p>2 opinion is that this is basically a review</p> <p>3 process problem.</p> <p>4 And why it is a review process</p> <p>5 problem is not clear. Could there be</p> <p>6 subject bias? Could it be rank bias?</p> <p>7 Could it be specialty bias? You know, an</p> <p>8 anesthesiologist claiming research funds</p> <p>9 for cancer research, can we take another</p> <p>10 really long shot? So those are the issues</p> <p>11 at stake.</p> <p>12 So if you want to get one missed</p> <p>13 correspondence, you will probably not find</p> <p>14 it. But as a contributory factor, I</p> <p>15 certainly think both the not getting a</p> <p>16 title change in neurosurgery and not</p> <p>17 advancing in academic rank were a factor.</p> <p>18 Q Did anyone at NIH ever tell you</p> <p>19 that not having a co-appointment in</p> <p>20 neurosurgery hurt you with respect to any</p> <p>21 of these grants that were not funded?</p> <p>22 A No. NIH is primarily focused on</p> <p>23 the whole review process, because there</p> <p>24 are administrative aspects of grant</p> <p>25 management, which I think are also</p>	<p>1 CONFIDENTIAL</p> <p>2 you've been facing recently the fact that</p> <p>3 your research focus is different now than</p> <p>4 it was at the time you were getting the</p> <p>5 R01s? Isn't the approach bias more</p> <p>6 significant?</p> <p>7 A I think we are starting to talk</p> <p>8 on treatment. And conceptually, when you</p> <p>9 talk about treatment, you want a clinician</p> <p>10 who is doing cancer research or has</p> <p>11 affiliation to cancer research. That</p> <p>12 gives it more legitimacy in clinical</p> <p>13 translation of the research.</p> <p>14 Q A joint appointment with</p> <p>15 neurosurgery is not going to ultimately</p> <p>16 overcome that issue, is it?</p> <p>17 A Well, it will definitely make it</p> <p>18 much easier for the person to associate</p> <p>19 this grant with somebody with a familial</p> <p>20 relationship with the field, rather than</p> <p>21 coming from anesthesiology.</p> <p>22 Q Where does Dr. Bruce work?</p> <p>23 A Columbia.</p> <p>24 Q In what department?</p> <p>25 A Neurosurgery.</p>
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<p>1 CONFIDENTIAL</p> <p>2 hurting. Because we are not able to get</p> <p>3 to the grants where we would be very</p> <p>4 likely to succeed. We are getting into</p> <p>5 other commentaries. There's a whole back</p> <p>6 door of the review process.</p> <p>7 But the bottom line is that NIH</p> <p>8 feels this research is important, and it</p> <p>9 should have been funded, and it's not</p> <p>10 being funded.</p> <p>11 Q But going back to the basis for</p> <p>12 your belief that the joint appointment in</p> <p>13 neurosurgery would be helpful, that's your</p> <p>14 opinion, but is it supported by anything</p> <p>15 that anyone at NIH has ever said in terms</p> <p>16 of a joint appointment of neurosurgery at</p> <p>17 Columbia?</p> <p>18 A They do comment positively when</p> <p>19 Dr. Bruce is put as co-PI. So they are</p> <p>20 enthusiastic, more enthusiastic, when</p> <p>21 Dr. Bruce's rank is up in the grants.</p> <p>22 So they have a bias coming</p> <p>23 toward a neurosurgery-based grant coming</p> <p>24 for brain cancer tumor treatments.</p> <p>25 Q Isn't the greater bias that</p>	<p>1 CONFIDENTIAL</p> <p>2 Q So you have a co-PI who is in</p> <p>3 neurosurgery?</p> <p>4 A That's why we are getting some</p> <p>5 scores which have improved. But if I had</p> <p>6 an appointment myself, it would work much</p> <p>7 better, because I am the lead guy.</p> <p>8 Q But you don't know if it's going</p> <p>9 to be funded based on that; you're</p> <p>10 speculating, right?</p> <p>11 A Yeah. It was one of the</p> <p>12 contributory factors.</p> <p>13 Q But you're speculating as to</p> <p>14 whether or not it would be a decisive</p> <p>15 factor?</p> <p>16 A Well, the question you can ask</p> <p>17 yourself is: Would you get your cancer</p> <p>18 treated by an anesthesiologist?</p> <p>19 Q No.</p> <p>20 A That's it. So that is an</p> <p>21 inherent bias that comes in when you get a</p> <p>22 grant from somebody who is not in the</p> <p>23 field, applying for the field, where there</p> <p>24 are people in the field who have got --</p> <p>25 their career is built on brain cancer</p>

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treatment, clinical.

Q In your opinion, isn't it more likely than not that you're still going to have your grants denied, even if you were a full professor with a joint appointment in neurosurgery, so long as you're pursuing the same research areas?

A I can only go by the comments of other people on my grant, not just the reviewers' comments, because the reviewers' comments have been sometimes very, very sloppy.

And all of those fields that my grants have never been scored properly includes Irving Bigio, who has had a U87 grant, which is, like, a mega grant that covers multi-institutions; Houston Baker, who has been in NIH and claims to have read 10,000 grants and said my grants are amongst the best he ever read.

So there are a lot of people who have a very different opinion and who have said that they know people who have struggled in this situation, but keep

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trying and going at it.

So every little bit counts in getting these grants. These are highly competitive grants. And for me, it becomes a very difficult crown to hold when academic grants and joint appointments are not aligned with the overall field of what I'm applying for.

Q The bottom of this e-mail on the first page, the last two sentences, "The part of the problem is the bias against IA drugs. Reviewers 2 and 3 were seriously biased against the IA approach."

Do you see that?

A Yeah, sure.

Q What does that mean?

A So a lot of people tried treating cancer with intra-arterial delivery of drugs, but they got the paradigm backwards. The paradigm works on a totally different dimension, and they failed in getting the treatments working.

We approached the problem in a totally different way, but that bias plays

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a factor in it. So getting an academic rank, getting -- we have been on the cover of cancer journals three times in the last four years, so, you know, our field is getting recognition, but it takes time. And that is what I'm talking about.

Q What was the outcome of your raising this issue on March 4, 2015?

A Well, this was the time -- at the same time the ECT controversy was happening, so there's a lot of back-and-forth e-mails. I didn't hear anything from Margaret Wood, so I talked to Chas Emala the next day.

And apparently, he didn't hear anything either, although he promised that I would discuss this with Margaret in person. So I don't know whether he discussed or didn't discuss. He didn't get back to me on the subject.

What we know since that time is that the very day I sent this e-mail, that very afternoon, a meeting was called. This e-mail is dated the 4th of March, so

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my grant runs from the 1st of April to the 31st of March, so I was in the fourth year of my grant. And a meeting was called to discuss when they can shut down my lab.

Q Called by whom?

A Margaret Wood.

Q And what was the outcome of that meeting?

A I have no idea. I was not a party to it. But the e-mail disclosures, we have seen since. And this was in the fourth year of it, and they were discussing shutting down my projects.

Q But they didn't shut down your projects?

A Well, they were discussing it.

Q But they didn't shut down your projects, right?

A Well, Dr. Brambrink came and wanted to shut down right away.

Q But he hasn't shut down your projects?

A Well, he nearly has, because he's not funding supplies. I'm doing some

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other research.

Q We established earlier on today, Dr. Joshi, that you haven't requested additional funding?

A I was told I wouldn't get additional funding. Only now I've been told that I can apply for it, and I'm doing that. I was told categorically after this thing runs out, poof.

Q You were told that the lab was going to close?

A No. I was told that no supplies will be given, funded after that. And the lab was also supposed to close in August '17.

Q How long do you think it's fair to keep your lab open without funding?

A I have no idea how you put that number, but you should not close it or start thinking of closing it on the fourth year of your funded project.

Q Okay. But they didn't do that.

So talking about today --

A Well, they had all the

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intentions of doing it. They all set up the thing by attacking my nonclinical time, by assigning me to ECT. All of these retaliatory measures came afterward.

Q What was --

A I strongly believe that this thing stalled primarily because we filed a litigation.

Q On March 4, 2015, you had not filed a formal complaint of research misconduct against Dr. [REDACTED] you did that a month later, right?

A Yeah. But we know what happened the moment I complained about [REDACTED] data. He ran out to Margaret Wood. Margaret Wood and [REDACTED] were conspiring to reach out to Steve Shafer and Pamela Flood to make a case of harassment against me. This is all documented in e-mails. So please don't ignore all the data you already have.

Q I'm not the judge here, Dr. Joshi. I'm just asking questions.

A No, but you have to understand.

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You are trying to portray that I got a fair shot at the deal, and this has been going on for a very long time. This is not the same thing. I had reconciled whatever happened regarding nonclinical time, because that's the way the game is played, although it is a federal violation of rules. I had lived with it. But this was something new that was happening.

You asked whether I contacted Dr. Wood or not. Dr. Chas Emala is in the chain of command. We know that there was a discussion between Dr. Wood. Dr. [REDACTED] did not respond to me, but he submitted a full report to Margaret Wood saying that he will share it with Joshi, but he never sent it to me.

We also know that Margaret Wood instructed Dr. [REDACTED] to reach out to Pamela Flood and Steve Shafer while he was making the case of harassment, and that is dated around late January-something.

So please don't try to say that, you know, these guys are some benign guys

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who are not doing anything behind my back.

Q When you sought the title change and the adjunct appointment in March of 2015, you had previously approached Dr. Wood about a joint appointment well before that, right?

A Yes. I had applied for the radiology department, because the radiology department wanted to promote me. That was in 2018, and they had approved all the processes. So in 2008, I was going to be an adjunct assistant professor or something in radiology, which would have helped me.

And at that time, my research was a little different. I was looking at the mechanisms of control of blood flow in the human brain, so it was different. It was not cancer-related so much. It was more radiology, and they approved it.

Q Did you seek an in-person meeting with Dr. Wood on or after March 4, 2015 to discuss your promotion?

A No, I did not.

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<p>1 CONFIDENTIAL</p> <p>2 Q Why not?</p> <p>3 A Because we have already --</p> <p>4 Dr. Wood turned down my radiology</p> <p>5 appointment. And I asked her, and she was</p> <p>6 not going to go through it. We know that</p> <p>7 Dr. Wood was not very helpful to me.</p> <p>8 Q Why did you send this e-mail</p> <p>9 then?</p> <p>10 A I was hoping that she would</p> <p>11 change it and give me a shot at the grant,</p> <p>12 because I was really thinking my grants</p> <p>13 are being hurt. Because now I was going</p> <p>14 to cancer treatment.</p> <p>15 Q The second page toward the</p> <p>16 bottom, the last sentence of the paragraph</p> <p>17 says, "I think title change and adjunct</p> <p>18 appointments, particularly in</p> <p>19 neurosurgery, will help because the</p> <p>20 process has to be initiated by our</p> <p>21 department."</p> <p>22 Do you see that?</p> <p>23 A Yeah.</p> <p>24 Q You say, a little bit earlier,</p> <p>25 "A title change in adjunct appointment in</p>	<p>1 CONFIDENTIAL</p> <p>2 Q The middle e-mail toward the</p> <p>3 bottom of the page, it starts "Dear</p> <p>4 Houston."</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q That's an e-mail from you to</p> <p>8 whom?</p> <p>9 A Dr. Houston Baker is one of the</p> <p>10 most senior people at National Cancer</p> <p>11 Institute. He's a program official. He</p> <p>12 reviews a lot of -- he's actually on the</p> <p>13 funding site. So there's a review site of</p> <p>14 the grant process, and the funding site of</p> <p>15 the grants process. So all the grants</p> <p>16 that are selected for funding, they have</p> <p>17 to find a person who will accept giving</p> <p>18 money to them, and then nurture. So he</p> <p>19 will tell you do this, do that, this is</p> <p>20 how we move the project forward. So I am</p> <p>21 in his portfolio.</p> <p>22 Q You write at the end of that</p> <p>23 e-mail, "It seems they have a deep bias</p> <p>24 against the IA delivery based on past</p> <p>25 failures that is preventing a meaningful</p>
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<p>1 CONFIDENTIAL</p> <p>2 neurosurgery will help a great deal."</p> <p>3 A Yeah.</p> <p>4 Q But you don't know whether or</p> <p>5 not it was going to make any difference in</p> <p>6 the likelihood of your getting funded,</p> <p>7 right?</p> <p>8 A Well, it certainly makes a grant</p> <p>9 look so much weightier.</p> <p>10 Q So much what?</p> <p>11 A Weight, academic weight comes</p> <p>12 with it.</p> <p>13 MR. SCHILLING: 32.</p> <p>14 (Whereupon, E-mail Exchange,</p> <p>15 Dated October of 2015, was marked as</p> <p>16 Joshi Exhibit 32 for identification,</p> <p>17 as of this date.)</p> <p>18 BY MR. SCHILLING:</p> <p>19 Q I'm showing you Exhibit 32.</p> <p>20 This is a series of e-mails, October of</p> <p>21 2018, beginning with the Bates number P925</p> <p>22 through 930.</p> <p>23 Do you have that in front of</p> <p>24 you?</p> <p>25 A Yes.</p>	<p>1 CONFIDENTIAL</p> <p>2 review."</p> <p>3 Do you see that?</p> <p>4 A Yes.</p> <p>5 Q So in October of 2018, your view</p> <p>6 was you were not getting a meaningful</p> <p>7 review from the reviewers?</p> <p>8 A Well, it's difficult for them</p> <p>9 to -- so if an anesthesiologist comes and</p> <p>10 says I have a radically different approach</p> <p>11 to cancer treatment using an approach that</p> <p>12 had failed for the past 60 years, there's</p> <p>13 going to be a healthy degree of</p> <p>14 skepticism.</p> <p>15 Q Is that what you were doing?</p> <p>16 A Yes. And when you do that, and</p> <p>17 you find out new treatments that are</p> <p>18 coming out with new drugs which have not</p> <p>19 been formulated, and new technologies are</p> <p>20 developing, it takes a long shot.</p> <p>21 MR. SCHILLING: 33.</p> <p>22 (Whereupon, Summary Statement,</p> <p>23 Release Date February 2, 2015, was</p> <p>24 marked as Joshi Exhibit 33 for</p> <p>25 identification, as of this date.)</p>

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BY MR. SCHILLING:

Q Dr. Joshi, I'm showing you Exhibit 33. There's a release date at the top of February 20, 2015, Bates numbered P295 through 302.

Do you have that in front of you?

A Yeah.

Q Do you recognize that document?

A Let me try to get it. They are very similar documents.

Q Sure. Take your time.

A Yeah.

Q What is this document?

A Well, this is a review that they send out once the grant is reviewed on various parameters, and this is their comments.

Q "They" is who?

A The reviewers. There's a review committee. When you submit a grant, it goes to a study section. The study section has reviewers. The reviewers score the grant and the various

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parameters, and they have secondary comments. So there are usually two reviewers and then a secondary reviewer, or three reviewers and a secondary, and a fourth reviewer sometimes, and they look at the grant.

Q And do they make a decision on whether or not it's going to be funded?

A Yes. They do a primary screening. And then if it does not triage and score, they do a full presentation.

Q And it talks about applications with the highest scientific merit, generally the top half.

Do you see that?

A Yeah. That was the 50th percentile that I was talking about.

Q In what universe are they looking; 50th percentile of what universe of applications? How does that work?

A I have no idea how many grants go into the study section. Typically there are six grants per reviewer, so they are looking at probably 100, 120 grants

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that are being reviewed for the study section. This is all an estimate.

Q I see.

Have you ever served as a reviewer?

A I was invited to, but they were sending me engineering grants, and I thought it was not appropriate for me to review engineering grants.

Q There's some colored highlighting on this document.

What is that?

A Those are the comments that I was trying to analyze what they are saying. And some of the comments were kind of strange. This is all animal research, and then they said no vertebrate animals. You know, so I don't know whether it was this grant or others, but people felt that the reviewers are not putting in the effort to read it properly.

Q You use the word "triaged" before.

Was this grant triaged?

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A Yes. This is '15, right?

Q And are you able to interpret any of these codes or numbers at the top of this page?

A No. Those are just administrative numbers. Those are just, you know, which type of grant it is, when is the start point, where is the end point. Those types of things.

Q And am I right that there are three reviewers on this, and they score the grant in five different categories?

A Yes.

Q Significance, investigators, innovation, approach and environment, right?

A Right.

Q It's a one to nine scale?

A Yes.

Q And the higher you go, the worse it is, right?

A Yes.

Q And the first critique on 296, the first reviewer, he scored the

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<p>1 CONFIDENTIAL</p> <p>2 investigators, which would be you and</p> <p>3 others, exceptional, right, number 1?</p> <p>4 A Yeah.</p> <p>5 Q And 1 equals exceptional; is</p> <p>6 that right?</p> <p>7 A Yeah.</p> <p>8 Q And approach, 6?</p> <p>9 A Yeah.</p> <p>10 Q How was that score?</p> <p>11 A So the biggest problem is they</p> <p>12 don't understand what the process is.</p> <p>13 Q Let me stop you there.</p> <p>14 How does 6 --</p> <p>15 A Six out of nine is not a good</p> <p>16 score. One out of nine is a very good</p> <p>17 score. When you get six out of nine, they</p> <p>18 are basically saying there is nothing new</p> <p>19 about this approach, whereas what we are</p> <p>20 presenting is radically new.</p> <p>21 Q So they're just</p> <p>22 misunderstanding?</p> <p>23 A They're not getting it. They</p> <p>24 don't understand it. And then they</p> <p>25 confuse intra-arterial delivery with</p>	<p>1 CONFIDENTIAL</p> <p>2 Q If you get sixes for approach,</p> <p>3 is that grant, generally speaking, going</p> <p>4 to get funded?</p> <p>5 A It depends what the other</p> <p>6 reviewers might say and the other</p> <p>7 reviewer's score is like.</p> <p>8 Q What if you got sixes from each</p> <p>9 of the three reviewers?</p> <p>10 A Yeah. It could be difficult.</p> <p>11 It's a very competitive thing, because it</p> <p>12 means that what you're not doing is not</p> <p>13 innovative at all. But what we are doing</p> <p>14 has never been done before by anybody.</p> <p>15 Q They disagree, right?</p> <p>16 A They don't get it. It's</p> <p>17 different. If you put in effort -- I can</p> <p>18 put facts in front of you, and you may not</p> <p>19 read them. It doesn't mean the facts</p> <p>20 don't exist. So the review process is the</p> <p>21 issue.</p> <p>22 And that is why Dr. Houston</p> <p>23 Baker, in the previous thing that you</p> <p>24 showed, he writes very clearly that this</p> <p>25 is the problem in the review process, and</p>
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<p>1 CONFIDENTIAL</p> <p>2 another drug delivery, which is</p> <p>3 fundamentally different.</p> <p>4 And as you can see, this guy has</p> <p>5 been so sloppy. One of these guys, you</p> <p>6 know, he's saying the overall content, all</p> <p>7 of this is draft research, and he says no</p> <p>8 vertebrate animals. So they aren't</p> <p>9 putting in the effort to understand what</p> <p>10 we are doing. It's a review process</p> <p>11 problem. So as I explained to you, the</p> <p>12 method we developed is very innovative,</p> <p>13 very different.</p> <p>14 And if someone doesn't seriously</p> <p>15 review the project -- and therein comes</p> <p>16 the importance of being a neurosurgeon,</p> <p>17 being a professor. It just gets your</p> <p>18 grant noticed a little bit more seriously.</p> <p>19 Is it one-on-one association? Certainly</p> <p>20 not. But is it a critical thing?</p> <p>21 Certainly, it is.</p> <p>22 Q And that's, again, based on</p> <p>23 what?</p> <p>24 A Based on these types of erratic</p> <p>25 review processes that I'm encountering.</p>	<p>1 CONFIDENTIAL</p> <p>2 we have to do everything possible to make</p> <p>3 it more viable.</p> <p>4 Q The next page, 297, this</p> <p>5 reviewer writes with respect to the</p> <p>6 investigators, under strengths, "An</p> <p>7 outstanding team of investigators that</p> <p>8 covers the diverse expertise needed to</p> <p>9 perform the proposed study." Under</p> <p>10 weaknesses, there's nothing.</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q This investigator had no issue</p> <p>14 with respect to your involvement or title</p> <p>15 or rank; is that right?</p> <p>16 A Let me just caution you that</p> <p>17 academic rank cannot be a scientific basis</p> <p>18 for reviewing a grant, so you will not</p> <p>19 find direct mention of academic ranks</p> <p>20 anywhere. Some reviewers may consider</p> <p>21 that as just the merit of the project;</p> <p>22 some reviewers may make a big deal out of</p> <p>23 it. So it just depends who you pick up.</p> <p>24 Q This investigator had no issue</p> <p>25 with your rank?</p>

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<p>1 CONFIDENTIAL</p> <p>2 A Yes.</p> <p>3 Q Moving to page P299, this</p> <p>4 investigator also gave the approach a 6.</p> <p>5 A Yeah.</p> <p>6 Q And gave the investigators a 2,</p> <p>7 and 2 equals outstanding, right?</p> <p>8 A Yeah. Well, it's less than 1.</p> <p>9 Q In terms of the codes used by</p> <p>10 the reviewers, 1 is exceptional, and 2 is</p> <p>11 outstanding, right?</p> <p>12 A Yeah.</p> <p>13 Q Yes?</p> <p>14 A Yes.</p> <p>15 Q Approach is, again, 6, and</p> <p>16 that's not good, right?</p> <p>17 A Uh-huh.</p> <p>18 Q Under investigators on the next</p> <p>19 page, page 300, under strengths, it says,</p> <p>20 "The principal investigator" --</p> <p>21 That would be you, right?</p> <p>22 A Uh-huh.</p> <p>23 Q -- "and the co-investigators</p> <p>24 have all the necessary background and</p> <p>25 expertise for success for the conduct of</p>	<p>1 CONFIDENTIAL</p> <p>2 this was explained in the grant.</p> <p>3 Tissue concentration,</p> <p>4 intra-arterial drug delivery have been</p> <p>5 studied for decades, and not to have shown</p> <p>6 a -- this is totally bogus. Airplanes</p> <p>7 crashed all the time before they flew.</p> <p>8 Just because people -- and he is</p> <p>9 conflicting intravenous injections with</p> <p>10 intra-arterial injections. Furthermore,</p> <p>11 intra-arterial is totally different.</p> <p>12 And the third thing is the</p> <p>13 assessment of drug tissue was achieved</p> <p>14 directly by mass spectroscopy imaging.</p> <p>15 Mass spectroscopy imaging gives one</p> <p>16 time-point measurement of a tissue sample</p> <p>17 taken after death.</p> <p>18 All of these show that the guy</p> <p>19 just doesn't get what we are saying.</p> <p>20 Q The reason you didn't get these</p> <p>21 grants is because these reviewers just</p> <p>22 didn't get it, and they're wrong?</p> <p>23 A That is one of those problems.</p> <p>24 When you come from the left field trying</p> <p>25 to offer a new solution, your academic</p>
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<p>1 CONFIDENTIAL</p> <p>2 the proposed studies."</p> <p>3 A Uh-huh.</p> <p>4 Q Weaknesses, they don't identify</p> <p>5 any, right?</p> <p>6 A Uh-huh.</p> <p>7 Q Whereas under approach, there's</p> <p>8 a number of weaknesses identified, right?</p> <p>9 A Yeah. Let me go back to 3 for a</p> <p>10 second. Hold on for a second.</p> <p>11 Q Sure.</p> <p>12 A Where was that approach, 3,</p> <p>13 critique 3?</p> <p>14 Q Under P300, under number 4,</p> <p>15 approach. There's only four weaknesses.</p> <p>16 You've colored three of them.</p> <p>17 A Yeah.</p> <p>18 Q And that's the reason you got</p> <p>19 the 6, right?</p> <p>20 A Yeah. But what he's saying is</p> <p>21 total nonsense.</p> <p>22 Q Okay.</p> <p>23 A Because he is saying CT, MRI.</p> <p>24 CT, MRI is not possible at the speed at</p> <p>25 which we have to make the measurement, and</p>	<p>1 CONFIDENTIAL</p> <p>2 rank and your joint appointments are</p> <p>3 critically important.</p> <p>4 Q Well, there's nothing on here</p> <p>5 about your rank or joint appointment.</p> <p>6 A That may not be -- nobody can</p> <p>7 comment on -- they are only allowed to</p> <p>8 comment on science. They cannot make</p> <p>9 comments on academic rank. They can say</p> <p>10 whether this expertise is enough or not.</p> <p>11 Q Well, they certainly can, and</p> <p>12 they have, as you have pointed out, right,</p> <p>13 on another one?</p> <p>14 A Yeah. But the level of review</p> <p>15 you're getting, the quality of review</p> <p>16 you're getting, is they are just not</p> <p>17 putting in the effort to understand what</p> <p>18 is being written.</p> <p>19 MR. SCHILLING: Number 34.</p> <p>20 (Whereupon, Summary Statement,</p> <p>21 Release Date November 24, 2016, was</p> <p>22 marked as Joshi Exhibit 34 for</p> <p>23 identification, as of this date.)</p> <p>24 BY MR. SCHILLING:</p> <p>25 Q Dr. Joshi, I'm showing you</p>

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Exhibit 34, which is another summary statement, this one with a release date of 11/24/2016.

Was this grant funded?

A No. This was -- it was triaged. This is the one that came after I had asked for promotion.

Q And on second page, P319, under critique number 1 on page 319, investigators was scored 3 by this person, and 3 means excellent, right?

A Yeah.

Q And approach is 5.

What does an approach of 5 signify?

A The approach of 5 is, again, the concerns of intra-arterial drug delivery.

Q That's not a good score, is it?

A It's not, but it is the bias, as I've told you, that exists in the field, which I have to take into account when I write grants.

Q On the second page with respect to this grant, P320, under investigators,

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sense of a scientific review process. It shouldn't be a conversation when you're judging science.

Q The next one says "Publication record is modest, at best, in this area."

Do you see that?

A Yes.

Q Do you disagree with that?

A Well, we are in a very innovative area of research. We are developing techniques at the same time, so we have different challenges and problems as compared to other people.

Q There's no rule against commenting on your academic rank in the investigative section of these reports, right?

A It's not a rule. It's just something -- a true scientific reviewer would not be carried by somebody's academic rank. But in reality, it is a factor, because when they open the grant, the first thing they see is rank and designation and abstract.

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it says one of the strengths is "The investigator has received prior funding in the area of drug delivery for GBM." And you write in the comment "Irrelevant."

Why is that irrelevant?

A Because funding and others are not criteria for judging the scientific merit of an application.

Q Even though they gave that as a strength in your favor?

A Well, both of the arguments are kind of nonscientific. You should judge science on the basis of science, not who the person is at the other end.

Q Under weaknesses, there's three listed. The first one is "Unclear why the applicant is only at the assistant professor level since his appointment in 1997."

Do you see that?

A Yeah.

Q You also consider that irrelevant?

A Yeah. It was irrelevant in the

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Q Page 322 is the next reviewer. He gave significance a 6 and approach a 6. Do you see that?

A Yeah.

Q That's bad, right?

A Yeah.

Q And investigator is 2, which is outstanding, right?

A Yes. But how can brain tumor treatment, a novel way of treating brain tumor treatment, be a 6?

Q And the third reviewer on page 325 also gave your approach a 6.

Do you see that?

A Yes. I think this is the reviewer who said mid-level scientist, if I'm not mistaken. So he was also taking rank into consideration. Let me just verify that that is the same guy.

Q Yes, 325. Overall impact, it says, "This is a proposal from a mid-level physician scientist."

A Right.

Q You took that as a criticism?

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<p>1 CONFIDENTIAL</p> <p>2 A Yes, it is. It is a derogatory</p> <p>3 term.</p> <p>4 Q Why do you see that's a</p> <p>5 criticism?</p> <p>6 A Because a mid-level scientist,</p> <p>7 when you have got two R01 fundings and</p> <p>8 things like that, it means you're not</p> <p>9 competing with the bigger boys on the</p> <p>10 team.</p> <p>11 Q But it's not listed as a</p> <p>12 weakness, right?</p> <p>13 A Yeah. But the comment itself</p> <p>14 should not be there. Your academic rank</p> <p>15 and things should not be a factor in the</p> <p>16 review of your scientific papers, but it</p> <p>17 is.</p> <p>18 Q On the next page, page 326,</p> <p>19 under strengths, the same investigator</p> <p>20 made reference to the fact that "This</p> <p>21 proposal is from an anesthesiologist and</p> <p>22 physician scientist who has significant</p> <p>23 expertise in studies of intra-arterial</p> <p>24 drug delivery and measurements."</p> <p>25 So he's actually identifying</p>	<p>1 CONFIDENTIAL</p> <p>2 the comments, and there will definitely be</p> <p>3 comments about problems in intra-arterial</p> <p>4 drug delivery.</p> <p>5 Q So they're not going to fund</p> <p>6 this grant with fives and sixes in</p> <p>7 approach, right?</p> <p>8 A It's difficult. But the point</p> <p>9 is that since that time, we have -- what</p> <p>10 we have been able to develop are new --</p> <p>11 when we wrote these projects, we had not</p> <p>12 developed the peptides, which are now</p> <p>13 cancer-homing peptides, which have</p> <p>14 developed since, which are far more</p> <p>15 effective. So the game is changing.</p> <p>16 MR. SCHILLING: 35.</p> <p>17 (Whereupon, E-mail Exchange,</p> <p>18 Dated September 26, 2017, was marked</p> <p>19 as Joshi Exhibit 35 for</p> <p>20 identification, as of this date.)</p> <p>21 BY MR. SCHILLING:</p> <p>22 Q Dr. Joshi, I'm showing you</p> <p>23 Exhibit 35, which is a one-page e-mail</p> <p>24 with the Bates number CU ending in 1804,</p> <p>25 an e-mail exchange from Dr. Brambrink to</p>
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<p>1 CONFIDENTIAL</p> <p>2 your status as a strength, is he not?</p> <p>3 A Yes. And also recognizing that</p> <p>4 intra-arterial drug delivery is a field of</p> <p>5 research, and I'm one of the few people</p> <p>6 who is doing it. I agree with that.</p> <p>7 Q So in terms of -- well, when he</p> <p>8 makes reference to your being an</p> <p>9 anesthesiologist and being a physician</p> <p>10 scientist, he considers that a strength,</p> <p>11 not a weakness?</p> <p>12 A Right. But the thing is that as</p> <p>13 an anesthesiologist, you may take it this</p> <p>14 way, and you can argue why is it not</p> <p>15 higher scores than what he is giving</p> <p>16 considering the fact that you have two</p> <p>17 R01s in the field?</p> <p>18 Q So the overall scoring on</p> <p>19 approach for this particular grant was --</p> <p>20 what were the three scores for approach?</p> <p>21 6, 6 and -- so 5, 6 and 6 were</p> <p>22 the scores on approach for this grant; is</p> <p>23 that right?</p> <p>24 A Right. And you must also</p> <p>25 realize that they carry -- I can look into</p>	<p>1 CONFIDENTIAL</p> <p>2 Fahmina Jafri, September 26, 2017.</p> <p>3 Do you have that in front of</p> <p>4 you?</p> <p>5 A Yes. This was the last funding</p> <p>6 that they released.</p> <p>7 Q The e-mail in the middle of the</p> <p>8 page is from Dr. Emala to Dr. Brambrink,</p> <p>9 "Subject: Joshi Operating Funds."</p> <p>10 Do you see that?</p> <p>11 A Uh-huh.</p> <p>12 Q What was the status of your NIH</p> <p>13 grant as of September 2017?</p> <p>14 A The no-cost extension had</p> <p>15 terminated.</p> <p>16 Q But they extended your lab, and</p> <p>17 they granted additional funding, right?</p> <p>18 A Yes, for one year. No, not one</p> <p>19 year. This is only for a shorter period</p> <p>20 of time.</p> <p>21 Q Is this the last time --</p> <p>22 A This is --</p> <p>23 Q I'm sorry.</p> <p>24 A This is the last time they</p> <p>25 released funding.</p>

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<p>1 CONFIDENTIAL</p> <p>2 Q This list, the budget that</p> <p>3 Dr. Emala is providing to Dr. Brambrink,</p> <p>4 did he get that from you?</p> <p>5 A Yes. We talked about it.</p> <p>6 Q So you talked about it? You</p> <p>7 requested \$21,000?</p> <p>8 A Right.</p> <p>9 Q And it went to Dr. Brambrink,</p> <p>10 and he approved it?</p> <p>11 A Right.</p> <p>12 Q Is this the last time you</p> <p>13 requested?</p> <p>14 A To my best knowledge, yes, that</p> <p>15 should be the last time.</p> <p>16 MR. SCHILLING: 36.</p> <p>17 (Whereupon, E-mail Exchange,</p> <p>18 Dated January 7, 2016, was marked as</p> <p>19 Joshi Exhibit 36 for identification,</p> <p>20 as of this date.)</p> <p>21 BY MR. SCHILLING:</p> <p>22 Q If I could direct your attention</p> <p>23 to paragraph 59 of the complaint.</p> <p>24 A Yeah.</p> <p>25 Q Paragraph 59 of the complaint</p>	<p>1 CONFIDENTIAL</p> <p>2 was making, and that was a substantial way</p> <p>3 of interpreting the same statement.</p> <p>4 Q Is it your view that the only</p> <p>5 real response would have been to do</p> <p>6 something affirmative?</p> <p>7 A No. At least inform that they</p> <p>8 took some action. There was no follow-up</p> <p>9 after this.</p> <p>10 Q What if they looked into it and</p> <p>11 determined that you were not, in fact,</p> <p>12 being retaliated against?</p> <p>13 A Then they should have told me</p> <p>14 that. There was no response, I think,</p> <p>15 until Steve wrote to them.</p> <p>16 Q And in response to that, did you</p> <p>17 receive a letter back from the university?</p> <p>18 A Yes. We got a letter from</p> <p>19 Ms. Capatano.</p> <p>20 Q Which said the university did</p> <p>21 not think you were being retaliated</p> <p>22 against?</p> <p>23 A Yes.</p> <p>24 Q Isn't that a response from the</p> <p>25 university, just not one you agreed with,</p>
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<p>1 CONFIDENTIAL</p> <p>2 says, "Dr. Joshi also contacted Jeffrey L.</p> <p>3 Kestler, the university compliance</p> <p>4 officer, on January 7, 2016 for guidance</p> <p>5 about the retaliation he was experiencing.</p> <p>6 This request also fell on deaf ears, and</p> <p>7 Mr. Kestler provided no response."</p> <p>8 Do you see that?</p> <p>9 A Yeah.</p> <p>10 Q I'm showing you Exhibit 36.</p> <p>11 A Yeah.</p> <p>12 Q Is this an e-mail that you</p> <p>13 received from Jeff Kestler letter on</p> <p>14 January 7, 2016?</p> <p>15 A Yes.</p> <p>16 Q He responded to you on the same</p> <p>17 day that you contacted him, did he not?</p> <p>18 A Yeah. He responded, but he</p> <p>19 didn't address the issue.</p> <p>20 Q You said in your complaint</p> <p>21 "Mr. Kestler provided no response."</p> <p>22 That's false, right, Dr. Joshi?</p> <p>23 A Yes. In terms of text and this</p> <p>24 thing, this is inaccurate. But the thing</p> <p>25 is that he did not address the complaint I</p>	<p>1 CONFIDENTIAL</p> <p>2 right?</p> <p>3 A No. That was afterward. This</p> <p>4 was not an effective response to what we</p> <p>5 were saying. We didn't get a response,</p> <p>6 whether it was genuine or not. And it was</p> <p>7 just to have them look into the matter,</p> <p>8 and that was it.</p> <p>9 And while it is technically</p> <p>10 correct that we got a response, we got no</p> <p>11 action following it up for the next one</p> <p>12 until we went and complained to Kestler</p> <p>13 again, having heard nothing from it. So</p> <p>14 this is a follow-up of not getting an</p> <p>15 effective response.</p> <p>16 Q The prior page of the complaint,</p> <p>17 paragraph 56, talks about your complaining</p> <p>18 to Ms. Schrag in August of '15.</p> <p>19 Do you see that?</p> <p>20 A Yeah.</p> <p>21 Q Do you recall complaining to</p> <p>22 Ms. Schrag about harassment and</p> <p>23 retaliation in August of 2015?</p> <p>24 A I'm sure if it's written there,</p> <p>25 there must be e-mails to that effect.</p>

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Q Paragraph 57 says, "Notwithstanding that Dr. Joshi had pleaded for intercession of his behalf, neither Dr. Taylor, Dr. Emala nor Ms. Schrag interceded on his behalf, nor even responded to him."

Do you see that?

A Yes.

Q Ms. Schrag did, in fact, respond to you, did she not?

A Ms. Schrag?

Q Yes.

A She responded that she talked to Anne Taylor, if I'm not mistaken. But in terms of addressing the problems I had, she did not respond. Again, in all these cases, while we did get a factual response in the sense there was a letter coming back to us, there was no action or follow up on what we were saying, and this was over a period of time.

Q But isn't that the distinction between interceding on your behalf and responding? And this paragraph says

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neither interceded nor responded, which suggests that nobody ever got back to you at all, which is not true, right?

A No. Dr. Anne Taylor did not get back to me. The harassment e-mail that was sent to Dr. Anne Taylor, Dr. Anne Taylor did not respond to it. Naomi Schrag might have responded to it, but not Anne Taylor.

MR. SCHILLING: 37 and 38.

(Whereupon, E-mail, Dated

December 9, 2014, was marked as Joshi Exhibit 37 for identification, as of this date.)

(Whereupon, Columbia University Non-Retaliation Policy, was marked as Joshi Exhibit 38 for identification, as of this date.)

BY MR. SCHILLING:

Q Dr. Joshi, I've handed you two documents. Exhibit 37 is an e-mail on behalf of Jeff Kestler, sent out to an e-mail list, December 9, 2014.

Do you recognize that e-mail?

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A Yeah.

Q Do you recall receiving this e-mail?

A I do.

Q Did he do anything after you received this e-mail?

A I had known the contents of the e-mail beforehand. As I've said before, I had testified in 2007 and had followed up the lectures that were submitted within the contents of the e-mail.

Q So when you got this e-mail, did you spend any time reviewing it or thinking about it, or did you just move on?

A I read it and moved on at that time, but I knew about the contents of this e-mail.

Q In the second to last paragraph, the last sentence of the second to last paragraph, Mr. Kestler writes, "For your reference, the full non-retaliation policy can be found at

policylibrary.columbia.edu."

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Do you see that?

A Yeah.

Q I assume, at that time, you had no reason to review the non-retaliation policy?

A I was familiar with the non-retaliation policy beforehand because we used to do annual courses. And in that, the non-retaliation policy was front and center.

Q When was --

A We had regular courses for several years in the department where the non-retaliation policy was brought up, so I was familiar with it.

Q Exhibit 38 is entitled "Columbia University Non-Retaliation Policy," effective March 2014.

Do you see that?

A Uh-huh.

Q Other than the research misconduct policy, which we talked about earlier, was there a non-retaliation policy prior to this being issued in March

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<p>1 CONFIDENTIAL</p> <p>2 of 2014?</p> <p>3 A I don't recall offhand the</p> <p>4 details, but we were -- there was -- in</p> <p>5 our lectures, the non-retaliation part was</p> <p>6 front and center. So we were taught those</p> <p>7 lectures. You are to sign up, and without</p> <p>8 that, you will not be renewed for your</p> <p>9 appointment. And in those, the</p> <p>10 slideshows, it was front and center,</p> <p>11 including the same pages that we see in</p> <p>12 the policy.</p> <p>13 Q Prior to what you've alleged you</p> <p>14 experienced after March of 2015, in your</p> <p>15 career at Columbia, did you ever feel that</p> <p>16 you had been retaliated against?</p> <p>17 A Well, we just discussed those</p> <p>18 e-mails. When I raised issues of</p> <p>19 nonclinical time, I felt I was retaliated</p> <p>20 against.</p> <p>21 Q And you complained about those</p> <p>22 issues at the time they arose?</p> <p>23 A Yes. I talked to Dr. Schrag</p> <p>24 about that.</p> <p>25 Q Did you feel that they were</p>	<p>1 CONFIDENTIAL</p> <p>2 you interpret that history in terms of</p> <p>3 Columbia's effectiveness in investigating</p> <p>4 retaliation?</p> <p>5 A I don't think they take it very</p> <p>6 seriously.</p> <p>7 Q At the time you filed your</p> <p>8 complaint of research misconduct in March</p> <p>9 2015, what were your expectations as to</p> <p>10 being protected from retaliation?</p> <p>11 A Well, I would like to talk about</p> <p>12 it and finally discuss what were the</p> <p>13 issues, why the nonclinical time was being</p> <p>14 awarded -- was being decreased, and why</p> <p>15 ECT time was being added on to me, when it</p> <p>16 was clearly harmful to me.</p> <p>17 And, at least, I expected a</p> <p>18 conversation, if nothing else, to say</p> <p>19 okay, this is what we are. This is how we</p> <p>20 were doing it. But there was -- despite</p> <p>21 these e-mails saying that, you know, we</p> <p>22 are looking into it, there was no</p> <p>23 effective response.</p> <p>24 And at the same time, the</p> <p>25 investigation was being dragged along, and</p>
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<p>1 CONFIDENTIAL</p> <p>2 effectively addressed?</p> <p>3 A They talked about it, but there</p> <p>4 was a strong bias in just concluding that</p> <p>5 there was no harm.</p> <p>6 Q You talked about the promotion</p> <p>7 process being a sham.</p> <p>8 Did you think that the process</p> <p>9 at Columbia for investigating complaints</p> <p>10 of retaliation was a sham?</p> <p>11 A I have serious doubts, and this</p> <p>12 is not because I am saying this. If you</p> <p>13 go into the public domain, you'll find</p> <p>14 articles about IRT9256 (phonetic), in</p> <p>15 which Mark Dickstein and Mark Heath had</p> <p>16 complained of retaliation in the same</p> <p>17 department under the same chair. And for</p> <p>18 years, it was not investigated by</p> <p>19 Columbia.</p> <p>20 We also have Jayden's (phonetic)</p> <p>21 e-mail when the faculty retaliated --</p> <p>22 retaliation against Dr. Yaman (phonetic).</p> <p>23 So there was a history of retaliation in</p> <p>24 the department.</p> <p>25 Q What did that history -- how did</p>	<p>1 CONFIDENTIAL</p> <p>2 I was getting no response on that front</p> <p>3 either, no meaningful response. Now, you</p> <p>4 are absolutely correct that they were</p> <p>5 responding to the e-mails, but there was</p> <p>6 no substantial response in actions that</p> <p>7 they were taking.</p> <p>8 Q When you filed your research</p> <p>9 misconduct complaint in March of 2015,</p> <p>10 were you relying on the protections</p> <p>11 against retaliation in this policy and the</p> <p>12 policy we showed you earlier?</p> <p>13 A I was -- not specific to the</p> <p>14 policy, because I don't memorize those</p> <p>15 details. But as a concept, if you have</p> <p>16 genuine good faith concerns about</p> <p>17 something scientific, you expect the</p> <p>18 university to protect you, because that is</p> <p>19 the heart of academic institutions.</p> <p>20 Q And if you didn't have that</p> <p>21 expectation, you weren't going to pursue</p> <p>22 this?</p> <p>23 A If you did have the expectation,</p> <p>24 it's very -- it would be difficult to</p> <p>25 pursue any claim of data falsification if</p>

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there are no protections, that is correct.

Q What would you have done in March of 2015 if there were no protections against retaliation at Columbia and its policies? Would you still have pursued this?

A It would have been difficult for me to pursue that, because then you're talking of an arbitrary condition in which, you know, the might-is-right situation. And in science, that is not acceptable.

With all due respect, Columbia is the finest institution. These are just problems in management. And no academic institution of that caliber can tolerate retaliation in any form. It is an expectation. It's a basic expectation of an academic institution.

Q But it always take courage to come forward and raise complaints, right?

A I am from a tough father.

Q Isn't it fair to say that even if these policies didn't have protections

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against retaliation, you would have come forward anyway and filed a complaint of research misconduct against Dr. [REDACTED] because you felt passionately about those issues?

A I wouldn't --

MR. HYMAN: Objection.

MR. SCHILLING: Noted.

MR. HYMAN: Well, I don't know if the witness -- have the witness answer this.

MR. SCHILLING: Don't coach the answer. You've made an objection to form. The witness can answer.

MR. HYMAN: No.

A Repeat your question. You are making me give a judgment call on something which is -- can you repeat the question?

Q It's --

MR. SCHILLING: Go ahead.

(Record read.)

MR. HYMAN: It's a hypothetical.

MR. SCHILLING: It absolutely

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is.

MR. HYMAN: And it is not a question that this witness can speculate on, and I don't see how you can have him answer such a question, so I'm objecting to it.

MR. SCHILLING: Are you directing him not to answer the question?

MR. HYMAN: You made a point with regard to it. If the witness can answer, I will not direct him not to answer.

A Can I have the question again?

Q At the time you filed your research misconduct in April of 2015, were you relying on the protections in the policies we have been talking about?

A If you don't have protection of people raising concerns, you would be hard-pressed to find anybody who will ever come and submit a complaint. That includes myself.

Q So you would not have come

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forward?

A In a hypothetical situation, it would be terribly difficult. The alternative in that situation is let people get along, let corruption go along. The next thing happens, you do your work, and no problems.

Q Because my sense from the testimony you've given today is that you felt passionately about the issue of research misconduct, and that you would have pursued this complaint in a formal manner in March or April of 2015 notwithstanding these policies, and that you didn't give any thought to these policies at the time, and you decided I'm going to pursue this because I feel it's important; isn't that right?

MR. HYMAN: You are mischaracterizing his testimony. You've mischaracterized his motivations, and you're asking him to ignore policy adopted by the federal government, Columbia, and what would

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happen if --

MR. SCHILLING: Let me ask it a different way then. Objection noted.

MR. HYMAN: Thank you.

BY MR. SCHILLING:

Q At the time, in March 2015, when you filed a formal complaint of research misconduct, were you thinking, at the time, about the policies that provided protections to people who complained?

A Absolutely.

Q Okay.

A And to add to that, I was personally instructed by Naomi Schrag that there is protection when you raise these concerns when I first testified in 2007. So irrespective of what was documented, I was personally reassured also that there was no retaliation if I raised these concerns in the past by Ms. Schrag.

MR. SCHILLING: Okay. Let me take five minutes.

(Thereupon, a recess was taken, and then the proceedings continued as

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Q And he told you that if it came from your chairman, he would consider it?

A Yes.

Q His consent would also be necessary, right?

A Yeah, definitely.

Q Do you know what his criteria were for granting a joint appointment?

A I have no idea, but when it comes to department of neurosurgery, I've been very active with them. Not only do I have a lot of publications working with Jeff Bruce, I also take the teaching rounds sometimes. I also enter residents, and I presented the grant round at least once, twice. Once in two years, I've presented neurosurgery grant rounds to present my research to them.

And there are neurosurgeons who are very keen to use my treatment in patients. It's just that I'm holding back the treatment to get that final bit of data, know all my drugs work, before I go to patients.

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follows:)

BY MR. SCHILLING:

Q Going back to the issue of the joint appointment, who was Dr. Solomon?

A Dr. Solomon is the chairman of neurosurgery.

Q Have you ever had a conversation with Dr. Solomon about the possibility of a joint appointment?

A Yes. I talked to him, I think, in early '15. And he said that you should do it through the departmental chair, and if you forward it, I would consider it.

Q Do you remember anything else that about conversation?

A No. It was a brief conversation, and that's how we started.

Q Did he ever --

A Just a minute. I told him that my grants would be affected by my appointment, and I would like to have an appointment in neurosurgery. I made it in context with the grant problem that I saw was affecting the scores.

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Q Who else in the department of anesthesiology has a joint appointment with the department of neurosurgery?

A Previously my mentor, Dr. William Lawrence Young, had a joint appointment in the department of neurosurgery. And typically, his fellows were working, you know, together with the two departments, so that is what I know.

Currently I do not know who else has a joint appointment. Probably Dr. [REDACTED] although he is a professor, he now works with the department of neurosurgery. But he has it. You can see it. He's got a joint appointment in two departments.

Q Anybody else that you know of that has a joint appointment?

A I have no idea.

Q After Dr. Brambrink became chair, did he discuss with you trying to get joint appointments in departments other than neurosurgery?

A Yes. He was interested in me

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going to the department of biomedical engineering. But biomedical engineering, he presented a pathway which would have been a long, tedious pathway, based on the time.

And really, I have not done that much interaction with biomedical engineering people as compared to neurosurgery. Radiology would have been a better option for me, where I have patients with intra-arterial drug delivery.

So he did suggest that we go through biomedical engineering, but the route he was doing was a very long one, so I did not pursue.

Q If you believe he's retaliating against you, why do you think he was taking steps to help you get a joint appointment?

A He wasn't taking any steps. He was giving me a course. He said this is how you do it. He wasn't taking any -- he was just telling me that you have to go

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take lectures, do the thing.

But, you know, when I got a joint appointment in radiology in 2008, it was finalized, but not finalized by Dr. Wood. There was no such conversation. At that time, I was just doing research with radiology people, and they initiated the process, and they did the process, and they got me the appointment.

Q What happened with neurosurgery after Dr. Brambrink? Did you have a conversation with Dr. Brambrink about pursuing Dr. Solomon?

A I think -- why did I not pursue the neurosurgery appointment with Dr. Brambrink? I don't exactly recall. But somewhere in there, I learned that the neurosurgery appointment would not come through or something, because I dread the joint appointment situation with Naomi Schrag, you know.

And somehow, it was communicated to me that the neurosurgery appointment would be difficult by the time I met

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Dr. Brambrink. And between the time that I had talked to Dr. Solomon and he had thought of considering me until the time Anne Taylor went and met, there was a change in this appointment in neurosurgery.

So I don't know why I didn't forcibly go through it, but I asked -- we were talking about an appointment in biomedical engineering or radiology.

Q And so Dr. Brambrink was giving you a path, making recommendations on how to pursue it? He wasn't discouraging you from pursuing it?

A Yes. But from what I learned from the process, the radiology department would be easier, but this would not really help me in terms of by the time it will go. My grant problems will not be addressed by it. And I was really keen on the neurosurgery appointment. That is what I wanted to do.

Q Has Dr. Brambrink done anything that has prevented you from getting a

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joint appointment?

A Not Dr. Brambrink; Dr. Wood didn't act it, in neurosurgery, when I asked for it. And I believe that in the period between early January, when I talked to Dr. Solomon -- because Dr. Solomon is a coauthor in a lot of Dr. [REDACTED] papers, and he is also -- and Dr. Sander Connolly is his main research person, Dr. [REDACTED] main research collaborators.

And these people are very, very, very close. And I believe that the change in Dr. Solomon's response from, you know, considering me in early '15 to flat out saying this was not possible was probably related to Dr. [REDACTED] publications.

Q But you're speculating on that; you don't know?

A Well, we do know from disclosures so far that Dr. [REDACTED] made allegations of harassment with Dr. Sander Connolly. This is written in e-mails.

Q But you have no knowledge as to

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1 why Dr. Solomon didn't agree to pursue --

2 A Yeah. I don't have direct  
3 knowledge, but the circumstantial evidence  
4 that senior people in the neurosurgery  
5 department, who are coauthors on the paper  
6 by Dr. [REDACTED] and whose data is now being  
7 questioned, would not be taken in a very  
8 healthy way.

9 Q In the period of time after you  
10 had filed a formal complaint of research  
11 misconduct in March, April -- let me start  
12 again.

13 After April of 2015, was your  
14 employment terminated?

15 A No. My employment was not  
16 terminated.

17 Q Were you demoted?

18 A I didn't get grants.

19 Q Were you demoted?

20 A No. I wasn't demoted.

21 (Continued on next page to  
22 include jurat.)  
23  
24  
25

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1 Q Were you suspended?

2 A No. I was not suspended.

3 MR. SCHILLING: That's all I  
4 have. Thank you.

5 (Time noted: 5:14 p.m.)  
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20 SHAILENDRA JOSHI  
21

22 Subscribed and sworn to  
23 before me this day  
24 of , 2019.  
25

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2 WITNESS EXAMINATION BY PAGE

3 SHAILENDRA JOSHI  
4

5 MR. SCHILLING 5  
6

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13 3 E-mail Exchange, 27  
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19 6 Excerpt From Columbia University 97  
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21 7 E-mail, 112  
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3 13 E-mail Exchange, 146  
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12 32 E-mail Exchange, 323  
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13 33 Summary Statement, 325  
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15 34 Summary Statement, 337  
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16 35 E-mail Exchange, 344  
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19 37 E-mail, 351  
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3 Our Assignment No: 26393  
4 Case Caption:  
5 SHAILENDRA JOSHI  
6 vs.  
7 THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE  
8 CITY OF NEW YORK, et al.  
9 DECLARATION UNDER PENALTY OF PERJURY  
10  
11 I declare under penalty of perjury  
12 that I have read the entire transcript  
13 of my deposition taken in the captioned  
14 matter or the same has been read to me,  
15 and the same is true and accurate, save  
16 and except for changes and/or corrections,  
17 if any, as indicated by me on the  
18 DEPOSITION ERRATA SHEET hereof, with the  
19 understanding that I offer these changes  
20 as if still under oath.  
21 SIGNATURE \_\_\_\_\_ DATE: \_\_\_\_\_  
SHAILENDRA JOSHI  
22  
23 Subscribed and sworn to on the \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_ before me,  
24  
25 Notary Public,  
in and for the State of \_\_\_\_\_

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1  
2 C E R T I F I C A T E  
3 STATE OF NEW YORK )  
4 : SS  
5 COUNTY OF NEW YORK)  
6  
7 I, Stephanie M. Butler, a Notary  
8 Public within and for the State of New York,  
9 do hereby certify:  
10 That SHAILENDRA JOSHI, the  
11 witness whose deposition is hereinbefore set  
12 forth, was duly sworn by me and that such  
13 deposition is a true record of the testimony  
14 given by the witness.  
15 I further certify that I am  
16 not related to any of the parties to this  
17 action by blood or marriage, and that I am  
18 in no way interested in the outcome of this  
19 matter.  
20 IN WITNESS WHEREOF, I have  
21 hereunto set my hand this 3rd Day of  
22 December, 2019.  
23  
24 \_\_\_\_\_  
STEPHANIE M. BUTLER  
25

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